

4971

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
3 BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
4 DEPARTMENT NO. 505

5
6 LESLIE J. WHITELEY AND)
7 LEONARD WHITELEY,)
8 PLAINTIFFS,)
9 VS.) NO. 303184
10 RAYBESTOS-MANHATTAN, INC., ET)
11 AL.,)
12 DEFENDANTS.)
13 _____)
14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 THURSDAY, MARCH 2, 2000
17 (VOLUME 35, PAGES 4971-5146)
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22

23 REPORTED BY: JUDITH ANN OSSA, CSR 2310
24 OFFICIAL REPORTER
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1 APPEARANCES:

2 FOR THE PLAINTIFFS:

3
4
5 WARTNICK, CHABER, HAROWITZ & TIGERMAN
6 BY: MADELYN J. CHABER, ESQ.
7 ROBERT BROWN, ESQ.

8 101 CALIFORNIA STREET, SUITE 2200
9 SAN FRANCISCO, CALIFORNIA 94111-5802

10 FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:

11 SHOOK, HARDY & BACON LLP
12 BY: DAVID K. HARDY, ESQ.

13 GERALD V. BARRON, ESQ.
14 LUCY E. MASON, ESQ.

15 ONE MARKET, STEUART TOWER, NINTH FLOOR
16 SAN FRANCISCO, CALIFORNIA 94105-1310.

17 FOR THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY:

18 WOMBLE, CARLYLE, SANDRIDGE & RICE
19 BY: JEFFREY L. FURR, ESQ.

20 200 WEST SECOND STREET
21 WINSTON-SALEM, NORTH CAROLINA 27101
22 HOWARD, RICE, NEMEROVSKI, CANADY,
23 FALK & RABKIN

24 BY: H. JOSEPH ESCHER III
25 THREE EMBARCADERO CENTER, 7TH FLOOR
26 SAN FRANCISCO, CALIFORNIA 94111-4065

27 FOR DEFENDANT METALCLAD INSULATION CORPORATION:

28 MISCIAGNA & COLOMBATTO
29 BY: GREGORY S. ROSSE, ESQ.

30 27 MAIDEN LANE, 4TH FLOOR
31 SAN FRANCISCO, CALIFORNIA 94108

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1 THURSDAY, MARCH 2, 2000 9:45 A.M.
2 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE
3 COURTROOM, IN THE PRESENCE OF THE JURY)
4 THE COURT: GOOD MORNING, EVERYBODY.
5 MR. BROWN, WE ARE BACK ON THE RECORD. AND
6 DR. MCALLISTER IS ON THE WITNESS STAND.
7 MR. BROWN: THANK YOU, YOUR HONOR
8 FURTHER TESTIMONY OF
9 HARMON MCALLISTER, PH.D.,
10 A WITNESS CALLED ON BEHALF OF THE DEFENSE, HAVING BEEN

11 PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:

12

13 CROSS-EXAMINATION (RESUMED)

14 BY MR. BROWN: Q. GOOD MORNING, DOCTOR.

15 A. GOOD MORNING.

16 Q. DID YOU HAVE A CHANCE -- OR YOU DIDN'T HAVE TO,
17 BUT DID YOU TAKE A LOOK AT THOSE REFERENCES IN THE SURGEON
18 GENERAL'S REPORT TO SEE IF YOU COULD FIND ANY OF THE STUDIES
19 THAT YOU HAD FUNDED?

20 A. YES, I DID.

21 Q. OKAY. CAN YOU IDENTIFY SOME OF THEM?

22 A. I ACTUALLY DID IDENTIFY THE ONE THAT WE WERE
23 TALKING ABOUT ON THE BOARD.

24 Q. OKAY.

25 A. THAT ONE THAT'S ON PAGE 271.

26 Q. DO YOU KNOW --

27 A. 1964. WE WERE TALKING ABOUT THE 1964, WEREN'T

28 WE?

4975

1 Q. I THINK WE WERE.

2 A. I HAVE VERIFIED THAT 39 OF THE REFERENCES WERE IN
3 THERE. ACTUALLY THEY WERE CITED ABOUT 50 TIMES.

4 Q. ARE THOSE 39 IN THE CHAPTER 9 REFERENCES OR
5 SOMEWHERE ELSE?

6 A. THERE WERE SOME IN THE CHAPTER 9 REFERENCE, WHICH
7 WAS THE CANCER AND CARDIOVASCULAR AND RELATED TO OTHER
8 DISEASES, SOME NONCANCER DISEASES OF THE LUNG.

9 AND THEN SEVERAL OTHERS WERE SPRINKLED
10 THROUGHOUT.

11 I DIDN'T FIND ANY IN THE GROUP OF 14 WHICH YOU
12 SAID WERE --

13 Q. WERE THE CONTRARY?

14 A. THE CONTRARY.

15 NONE OF OURS WERE IN THAT PART.

16 Q. DID YOU IDENTIFY THEM BY NAME?

17 A. COULD I? DID I? YES, I HAVE A LIST OF THEM. I
18 MEAN, I HAVE IT.

19 Q. DO YOU HAVE A LIST?

20 A. NOT ON MY PERSON, BUT I THINK THERE IS ONE AROUND
21 SOMEWHERE.

22 THERE IS THE LIST OF CTR GRANTEEES WHOSE
23 PUBLICATIONS HAVE BEEN CITED IN THE SURGEON GENERAL'S
24 REPORTS.

25 Q. BUT I MEAN, DO YOU HAVE IT HERE TODAY?

26 A. I DON'T PHYSICALLY HAVE IT WITH ME RIGHT HERE AT
27 THIS MOMENT, BUT I THINK IT'S HERE IN THE ENVIRONMENT.

28 IT'S NOT ON MY PERSON, I GUESS, IS WHAT I'M

4976

1 SAYING.

2 Q. CAN WE GET IT IN THE NEXT MINUTE OR TWO?

3 A. IF MY ATTORNEY WISHES.

4 MR. ESCHER: I WILL GO GET IT, IF THAT'S WHAT
5 YOU WANT.

6 (DISCUSSION OFF THE RECORD)

7 MR. BROWN: Q. YOU'VE JUST BEEN HANDED
8 SOMETHING BY MR. ESCHER.

9 IS THAT SOMETHING THAT YOU PREPARED LAST NIGHT?

10 A. I DIDN'T ACTUALLY HAVE THE LIST TYPED LAST
11 NIGHT. THE LIST WAS ALREADY IN EXISTENCE.

12 AND IT REFLECTS THE LIST OF GRANTEEES THAT I HAD
13 PREPARED EARLIER. THIS IS A COPY OF THAT LIST.

14 Q. OKAY. COULD I TAKE A LOOK AT IT?

15 A. AND I MARKED ON IT IN YELLOW THE CITATIONS OF CTR

16 GRANTEES THAT WERE REPRESENTED IN THE 1964 ANNUAL REPORT.
17 Q. DOES THIS SHOW WHERE THEY WERE REFERENCED, AS TO
18 WHAT CHAPTER?
19 A. YOU HAVE TO WORK BACKWARDS, BUT IT WILL SHOW
20 THAT, ONCE YOU FIND THE NAME, YOU'LL SEE THAT IT HAS A
21 REFERENCE TO THE YEAR OF THE SURGEON GENERAL'S REPORTS THAT
22 ARE THERE, AND THEN THE PAGE NUMBER ON WHICH THE REFERENCE
23 IS FOUND.
24 AND THEN, ONCE YOU GO TO THE SURGEON GENERAL'S
25 REPORT, YOU HAVE TO LOOK UP IN THAT PARTICULAR PAGE AND
26 YOU'LL FIND THAT REFERENCE THERE.
27 THEN, IF YOU HAVE TIME, WHICH I DIDN'T DO LAST
28 NIGHT -- THAT'S A FAIRLY DECENT JOB IN ITSELF -- YOU HAVE TO
4977
1 GO BACK IN THAT CHAPTER, FIND WHERE THAT REFERENCE ACTUALLY
2 OCCURS.
3 AND THE TWO PLACES THAT I SPECIFICALLY DID THAT
4 WERE TO LOCATE DR. WARNER'S CITATION, AND ALSO TO MAKE SURE
5 THAT NONE OF THE CITATIONS THAT YOU HAD IDENTIFIED
6 REPRESENTED CTR SCIENTIFIC PUBLICATIONS.
7 Q. JUST GLANCING AT IT, IT LOOKS LIKE WHAT'S ON THIS
8 DOCUMENT ARE FUNDED PROJECTS THAT HAVE BEEN REFERENCED BY
9 ANY SURGEON GENERAL'S REPORT?
10 A. THAT'S CORRECT. THAT'S THE TOTAL LIST.
11 I DON'T HAVE A LIST OF THOSE JUST WITH THE '64.
12 THE '64 WAS IN THERE. I HIGHLIGHTED THEM IN YELLOW.
13 IF YOU PAGE THROUGH THERE -- IF YOU PAGE THROUGH
14 THERE --
15 Q. I SEE.
16 A. IF YOU PAGE THROUGH THERE, YOU'LL FIND THEM.
17 Q. AND THERE'S 39?
18 A. 39 REFERENCES. ACTUALLY, THERE'S ACTUALLY AT
19 LEAST 50 CITATIONS TO THOSE 39 REFERENCES.
20 IN OTHER WORDS, SOME REFERENCES -- SOME WERE
21 CITED MORE THAN -- SOME OF THE REFERENCES WERE CITED MORE
22 THAN ONCE.
23 I MADE A YELLOW MARK EVERY TIME I SAW A CITATION
24 AND I COUNTED 50 CITATIONS. I CHECKED TO MAKE SURE THEY
25 WERE IN FACT IN THE SURGEON GENERAL'S REPORT AND THEY WERE
26 THERE.
27 SOME HAD CANCER, SOME HAD HEART DISEASE, SOME IN
28 NONCANCEROUS LUNG DISEASE, SOME IN PHARMACOLOGY, SOME IN
4978
1 CIGARETTE SMOKE COMPONENTS. OTHERS SCATTERED THROUGHOUT THE
2 REPORT.
3 Q. YOU DIDN'T HAPPEN TO COUNT THE REFERENCES IN THE
4 CHAPTER 9 CANCER PORTION OF THE REPORT?
5 A. I'M SURE I DID. I DON'T REMEMBER.
6 IT'S PROBABLY -- THEY WERE PRETTY EVENLY
7 DISTRIBUTED, SO 50 OVER 12 CHAPTERS MEANS FIVE.
8 I THINK THERE WAS LIKE EIGHT, SOMETHING LIKE
9 THAT, IN THE NINTH CHAPTER.
10 Q. JUST AS AN EXAMPLE, ON NO. 10, IT SAYS "'64";
11 IT'S HIGHLIGHTED IN YELLOW. THAT'S CONSISTENT. AND THEN IT
12 GIVES A PAGE NUMBER.
13 THAT'S THE SURGEON GENERAL'S REPORT?
14 A. THAT'S THE PAGE NUMBER ON THE SURGEON GENERAL
15 REPORT WHERE THAT PARTICULAR REFERENCE IS CITED ANSWER. THE
16 PAGE --
17 Q. FROM MEMORY --
18 A. LET ME JUST FINISH. I DIDN'T QUITE TELL YOU THE
19 FULL STORY.
20 Q. OKAY.

21 A. THE PAGE NUMBER THAT YOU FIND IN THE SURGEON
22 GENERAL'S REPORT IN EACH CASE REFERS TO A PAGE OR PAGES AT
23 THE END OF A CHAPTER. THE SURGEON GENERAL'S REPORT HAS GOT
24 LIKE 12, 15 CHAPTERS, ONE OF WHICH IS CANCER.

25 MR. BROWN: YOUR HONOR, I THINK THIS IS GOING
26 BEYOND MY QUESTION.

27 THE COURT: OKAY. WHY DON'T YOU GO TO THE NEXT
28 QUESTION.

4979

1 MR. BROWN: ALL RIGHT.

2 Q. I WAS GOING TO ASK YOU, JUST GLANCING AT NO. 10,
3 PAGE 303 IS WHAT IT REFERENCED.

4 JUST FROM LOOKING AT IT YESTERDAY, THAT'S NOT
5 CHAPTER 9, IS IT? I THINK IT'S THE NICOTINE CHAPTER. IF
6 YOU WOULD, TAKE A LOOK AT IT. USE A COPY.

7 A. I HONESTLY CAN'T REMEMBER WHAT CHAPTER EACH ONE
8 IS IN, NO.

9 MR. ESCHER: YOUR HONOR, EXCUSE ME.

10 IF WE ARE GOING TO CONTINUE TO ASK QUESTIONS
11 ABOUT THIS DOCUMENT, I THINK THAT WE SHOULD IDENTIFY IT.

12 IT HAS BEEN MARKED FOR IDENTIFICATION AS
13 DEFENDANTS' EXHIBIT 4430, AND THAT'S IN THE FORM THAT IT HAS
14 NOT BEEN MARKED UP BY THE DOCTOR.

15 MR. BROWN: OH, OKAY.

16 I'D LIKE A COPY FOR US OF THIS.

17 IS THAT GOING TO BE SOMETHING YOU CAN DO? HOW
18 ABOUT JUST TAKING THIS ONE?

19 MR. ESCHER: THAT'S FINE.

20 MR. BROWN: WHAT DID YOU SAY THE PAGE NUMBER
21 WAS?

22 MR. ESCHER: 4430.

23 THE COURT: 4430.

24 MR. BROWN: Q. JUST FOR REFERENCE TO PAGE
25 NUMBERS, I WILL LET YOU LOOK AT IT, SO YOU CAN CONFIRM FOR
26 ME CHAPTER 9 STARTS ON PAGE 121; IS THAT RIGHT?

27 A. YES.

28 Q. AND CHAPTER 10, IS THAT RIGHT, STARTS ON 259?

4980

1 A. YES.

2 Q. OKAY. DO YOU KNOW WHICH, IF ANY, OF THESE WERE
3 PICKED UP BY PHILIP MORRIS OR RJR AND SOMEHOW INCORPORATED
4 INTO A CHANGE IN THEIR CIGARETTE DESIGN?

5 MR. ESCHER: OBJECTION. VAGUE. LACK OF
6 FOUNDATION.

7 THE COURT: WELL, THERE IS NO FOUNDATION FOR HIS
8 KNOWING ABOUT THE CIGARETTE DESIGN.

9 MR. BROWN: I'M JUST ASKING IF HE KNOWS.

10 THE COURT: THE POINT IS, THERE IS NO FOUNDATION
11 FOR HIS HAVING ANY KNOWLEDGE ABOUT CIGARETTE DESIGN AT ALL.

12 MR. BROWN: WELL, I'M NOT ASKING ABOUT WHAT THE
13 DESIGN WAS, BUT HE CERTAINLY MAY WELL HAVE SOME INFORMATION
14 THAT SOME OF THESE WERE ACTUALLY IN FACT UTILIZED IN A
15 DESIGN CHANGE, AND HE MAY NOT. BUT I THINK I JUST WOULD
16 LIKE TO KNOW WHETHER HE DOES OR DOESN'T.

17 THE COURT: DO YOU KNOW?

18 THE WITNESS: (NO AUDIBLE RESPONSE)

19 THE COURT: GIVE A VERBAL ANSWER.

20 THE WITNESS: NO. I'M SORRY.

21 THE COURT: ALL RIGHT.

22 MR. BROWN: THAT'S FINE. THAT'S ALL I NEEDED.
23 SO THAT ENDS THAT.

24 I JUST WANTED TO ASK YOU A COUPLE OF QUESTIONS
25 ABOUT THE STRUCTURE OF CTR.

26 IT'S TRUE, ISN'T IT, DOCTOR, THAT THE TOBACCO
27 INDUSTRY, THAT IS, THE SPECIFIC COMPANIES THAT ARE PART OF
28 CTR, THEY CONTROL CTR, DON'T THEY?

4981

1 A. THEY GIVE THE MONEY TO CTR. IF BY THAT, YOU MEAN
2 EITHER THE POWER OF THE PURSE STRING, SURE, THEY CAN SHUT US
3 OFF ANYTIME. IN 40-ODD YEARS, THEY COULD HAVE SHUT IT OFF
4 BY JUST STOPPING THE FLOW OF MONEY, IF THAT'S WHAT YOU MEAN
5 BY "CONTROL."

6 Q. THAT'S ALL I MEAN.
7 THE MONEY THAT -- ALL OF THE MONEY THAT COMES
8 INTO CTR, INCLUDING WHAT GOES TO SALARIES AND SO FORTH, THAT
9 ALL COMES FROM THOSE SAME TOBACCO COMPANIES?

10 A. SURE.

11 Q. AND THOSE TOBACCO COMPANIES INCLUDE PHILIP MORRIS
12 AND RJR?

13 A. YES, THEY DO.

14 Q. OKAY. AND THEY HAVE THE POWER THROUGH THEIR
15 BOARD OF DIRECTORS TO TERMINATE ANYONE WORKING AT CTR AT ANY
16 TIME THEY LIKE FOR ANY REASON?

17 MR. ESCHER: OBJECTION. LACK OF FOUNDATION.
18 CALLS FOR A LEGAL CONCLUSION.

19 THE COURT: WELL, ACTUALLY, IS IT BEING OFFERED
20 FOR HIS UNDERSTANDING --

21 MR. BROWN: YES.

22 THE COURT: -- OR IS IT BEING OFFERED AS TO
23 WHETHER IT'S CORRECT OR NOT?

24 MR. BROWN: JUST HIS UNDERSTANDING.

25 THE COURT: WE'VE GOT TO TALK ONE AT A TIME.
26 OKAY?

27 IS THERE ANY OBJECTION, WITH A LIMITING
28 INSTRUCTION, AS TO HIS UNDERSTANDING OF THE SITUATION?

4982

1 MR. ESCHER: NO, YOUR HONOR.

2 THE COURT: OKAY, JURORS. THIS ANSWER MAY NOT
3 BE CONSIDERED BY YOU AS EVIDENCE OF THE ACCURACY OF THE
4 ANSWER, BUT IT MAY BE CONSIDERED BY YOU AS EVIDENCE OF THIS
5 WITNESS' UNDERSTANDING OF THE SITUATION.

6 THE WITNESS: TO MY KNOWLEDGE, NO. 1, THAT NEVER
7 HAPPENED, THAT SOMEONE IN THE COMPANIES REMOVED AN EMPLOYEE.

8 WHETHER THEY HAD THE POWER -- YOUR QUESTION IS:
9 DID THEY HAVE THE POWER TO?

10 MR. BROWN: Q. YES. THAT'S RIGHT.

11 A. AND I HONESTLY DON'T KNOW.

12 MY GUESS IS THAT IF THE FUNDER OF A COMPANY
13 WANTED SOMEBODY FIRED, THEY MIGHT BE ABLE TO BRING SOME
14 PRESSURE ON SOMEBODY TO DO IT, BUT I NEVER SAW IT HAPPEN
15 WHEN I WAS THERE.

16 JUST FROM THE WAY THAT THINGS ARE SET UP IN
17 COMPANIES, I WOULD THINK THAT SOMEBODY AT THE TOP MIGHT BE
18 ABLE TO AFFECT THAT, BUT I REALLY CAN'T SEE THEM -- I NEVER
19 SAW ANY EVIDENCE OF THEM MEDDLING IN OUR DAY-TO-DAY AFFAIRS
20 AT ALL.

21 Q. WELL, THE BOARD OF DIRECTORS OF CTR, THEY HAVE
22 CONTROL OVER WHAT CTR DOES? THEY HAVE THE CONTROL, WHETHER
23 THEY EXERCISE IT OR NOT; WOULD YOU AGREE WITH THAT?

24 A. NOT IN THE SCIENTIFIC AREA. THEY HAVE ABSOLUTELY
25 NO CONTROL IN THE SCIENCE.

26 Q. WOULD YOU AGREE THAT IF THEY DIDN'T LIKE AN
27 ARTICLE THAT WAS GOING TO COME UP, THEY COULD SHUT DOWN CTR
28 IN 24 HOURS?

4983

1 MR. ESCHER: OBJECTION. ARGUMENTATIVE. LACK OF

2 FOUNDATION.
3 THE COURT: AGAIN, THIS IS THIS SUBJECT TO THE
4 SAME LIMITING INSTRUCTION?
5 MR. BROWN: THAT'S RIGHT.
6 THE COURT: THIS IS JUST FOR THE WITNESS'
7 UNDERSTANDING. IT'S NOT OFFERED AS EVIDENCE -- YOU MAY NOT
8 CONSIDER IT AS EVIDENCE OF THE ACCURACY OF THE ANSWER. YOU
9 MAY CONSIDER IT AS EVIDENCE OF WHAT THE WITNESS
10 UNDERSTANDS.
11 THE WITNESS: THAT, IN FACT, IS A MUCH MORE
12 COMPLICATED QUESTION THAT YOU HAVE STATED.
13 THEY COULD NOT -- ABSOLUTELY COULD NOT COME DOWN
14 AND SHUT US DOWN TOMORROW, I MEAN IN ONE DAY, AFTER THEY
15 DECIDED THEY DIDN'T LIKE SOMETHING THAT CAME OUT.
16 THEY COULD, IN FACT, NOT DISREGARD THE PROMISES
17 TO INVESTIGATORS THAT THEY HAD ALREADY MADE, WHICH WERE
18 LEGALLY BINDING FOR RESEARCH TO BE DONE IN THE FUTURE. THAT
19 CERTAINLY WOULD BE IMPOSSIBLE FOR THEM TO DO.
20 THEY COULD CERTAINLY SAY, "OKAY. JANUARY 1975, WE
21 ARE TIRED OF IT. WE ARE NOT -- YOU HAVE TO STOP BUSINESS."
22 THEY COULD HAVE SAID THAT. AND OF COURSE, THEY
23 DIDN'T FOR ALL THOSE 40-ODD YEARS. CTR JUST SORT OF KEPT
24 GOING, DOING WHAT IT WAS DOING.
25 MR. BROWN: Q. I KNOW YOU TOLD US THAT THREE
26 TIMES NOW.
27 BUT THE QUESTION I WANT --
28 A. I'M GLAD YOU REMEMBER.
4984
1 Q. I HAVE A SHORT-TERM MEMORY.
2 WOULD YOU AGREE, SIR, THAT THE BOARD OF DIRECTORS
3 OF CTR HAS NO ONE TO OVERSEE WHAT THEY DO? THEY CAN DO
4 WHATEVER THEY WANT, SUBJECT TO WHATEVER RIGHT YOU MAY HAVE,
5 BUT THAT BOARD OF DIRECTORS CAN DO WHATEVER THEY WANT?
6 MR. ESCHER: OBJECTION. LACK OF FOUNDATION.
7 IT'S CUMULATIVE, YOUR HONOR.
8 THE COURT: AGAIN, I'LL LET THE WITNESS
9 ANSWER. , SUBJECT TO THE SAME LIMITING INSTRUCTION.
10 THE WITNESS: WOULD YOU REASK THE QUESTION.
11 MY SHORT-TERM MEMORY IS SLOWING UP.
12 I JUST WANT TO MAKE SURE I ANSWER EXACTLY THE
13 QUESTION THAT YOU ASKED.
14 MR. BROWN: Q. THE COURT REMINDS YOU WHEN YOU
15 GET TO LUCID INTERVALS, THAT'S WHEN YOU HAVE TO BE
16 CONCERNED. OKAY.
17 THE FACT IS, IN YOUR UNDERSTANDING, SIR, THAT IF
18 THIS BOARD OF DIRECTORS OF CTR -- WHO ARE COMPOSED OF THE
19 EXECUTIVES OF THE TOBACCO INDUSTRY; CORRECT?
20 A. YES, THAT'S RIGHT.
21 Q. -- THAT IF THEY WANT TO TERMINATE SOMEBODY, IF
22 THEY GET UPSET WITH ANYTHING THAT'S GOING ON, THEY HAVE THE
23 POWER TO PUT ON THE PRESSURE. IF THE PRESSURE IS NOT
24 RESPONDED TO, THEY CAN TERMINATE PEOPLE, THEY CAN SHUT DOWN
25 THE COMPANY, THEY CAN DO ALL OF THAT, CAN'T THEY?
26 A. OF ALL THE THINGS THAT YOU'VE SAID, I DIDN'T HEAR
27 YOU SAY THAT THEY COULD SHUT DOWN THE SCIENCE.
28 SO YES, HYPOTHETICALLY, GIVEN YOUR HYPOTHETICAL
4985
1 CONSTRUCT, I SUPPOSE, AS A BOARD OF DIRECTORS, AS ANY BOARD
2 OF DIRECTORS IN ANY COMPANY, THEY HAVE THE AUTHORITY TO SHUT
3 DOWN ANYTHING THAT THEY DON'T LIKE.
4 Q. SURE. AND I DIDN'T MEAN THEY COULD SHUT DOWN A
5 CONTRACTED, FUNDED SCIENTIFIC ENDEAVOR.
6 THEY COULDN'T DO THAT. OBVIOUSLY, THEY CAN DO

7 IT, BUT THEY'D SUED OR SOMETHING. THAT'S WHAT YOU ARE
8 SAYING?
9 A. EVEN MORE IMPORTANTLY, THEY CERTAINLY COULDN'T
10 STOP SCIENTISTS DOING WHAT SCIENTISTS DO. THEY'RE AT THEIR
11 BENCH. THEY'RE DOING SCIENCE.
12 Q. IF THEY SHUT DOWN THE COMPANY, THEY WOULDN'T BE
13 AT THE BENCH, WOULD THEY?
14 A. THAT'S WHAT I'M SAYING. SCIENTISTS WILL FIND A
15 WAY TO GO ON.
16 MR. BROWN: OKAY, DOCTOR. THANK YOU. IT'S BEEN
17 A PLEASURE. HAVE A NICE TRIP BACK.
18 THE WITNESS: OKAY. THANK YOU. ENJOYED IT.
19 THE COURT: ANYTHING FURTHER FOR
20 DR. MCALLISTER?
21 MR. ESCHER: I DON'T HAVE ANY QUESTIONS FOR
22 DR. MCALLISTER.
23 THE COURT: MAY HE BE EXCUSED?
24 MR. ESCHER: YES.
25 MR. BROWN: HE MAY.
26 THE COURT: YOU ARE EXCUSED, DOCTOR.
27 THE WITNESS: OKAY. ENJOYED IT.
28 (WITNESS EXCUSED)

4986

1 THE COURT: WHO IS CALLING THE NEXT WITNESS?
2 MR. FURR: R.J. REYNOLDS IS CALLING THE NEXT
3 WITNESS, YOUR HONOR. DR. MACE BECKSON.
4 THE CLERK: PLEASE COME FORWARD. PLEASE STAND
5 HERE AND RAISE YOUR RIGHT HAND.
6 TESTIMONY OF
7 MACE BECKSON, M.D.,
8 A WITNESS CALLED ON BEHALF OF THE DEFENSE, HAVING BEEN DULY
9 SWORN, TESTIFIED AS FOLLOWS:
10 THE CLERK: PLEASE STATE YOUR NAME.
11 THE WITNESS: DR. MACE BECKSON, M-A-C-E,
12 BECKSON, B-E-C-K-S-O-N.
13 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.
14

15 DIRECT EXAMINATION

16 BY MR. FURR: Q. DR. BECKSON, EXCUSE ME. YOU
17 NEED TO PUT THAT AWAY (INDICATING) UNTIL THE PLAINTIFF
18 APPROVES THAT WE CAN SHOW THIS TO THE JURY.
19 YOUR HONOR, BUT HE DIDN'T KNOW THAT I HAD TO ASK
20 HIM BEFORE HE BROUGHT THE BRAIN OUT.
21 GOOD MORNING, DR. BECKSON.
22 A. GOOD MORNING.
23 Q. WOULD YOU INTRODUCE YOURSELF TO THE JURY.
24 A. MY NAME IS DR. MACE BECKSON.
25 Q. DR. BECKSON, GIVEN THE DEMONSTRATIVE THAT YOU
26 JUST BROUGHT OUT, THE JURY PROBABLY ALREADY KNOWS YOU ARE
27 HERE TO TALK TO US IN PART ABOUT THE BRAIN, AREN'T YOU, SIR?
28 A. YES, I AM.

4987

1 Q. YOU'RE A PSYCHIATRIST, AREN'T YOU, DOCTOR?
2 A. YES, I AM.
3 Q. YOU'RE LICENSED TO PRACTICE IN CALIFORNIA?
4 A. YES.
5 Q. YOU ARE A BOARD-CERTIFIED PSYCHIATRIST, AREN'T
6 YOU?
7 A. THAT'S CORRECT.
8 Q. WOULD YOU EXPLAIN TO THE JURY THE AREAS OF
9 PSYCHIATRY THAT YOU ARE BOARD-CERTIFIED IN. JUST IDENTIFY
10 THEM FOR US.
11 A. I'M BOARD-CERTIFIED IN GENERAL PSYCHIATRY. I'M

12 BOARD-CERTIFIED IN ADDICTION PSYCHIATRY. I'M
13 BOARD-CERTIFIED IN ADDICTION MEDICINE. AND I'M
14 BOARD-CERTIFIED IN GERIATRIC PSYCHIATRY AND FORENSIC
15 PSYCHIATRY.

16 Q. SO YOU ARE BOARD-CERTIFIED IN FIVE AREAS OF
17 PSYCHIATRY; IS THAT CORRECT?

18 A. ESSENTIALLY, YES.

19 Q. AND THE JURY HAS HEARD ABOUT THE BOARD
20 CERTIFICATION PROCESS, HOW IT INVOLVES TESTING.

21 DID YOU HAVE TO GO THROUGH THAT PROCESS FOR EACH
22 OF YOUR BOARD CERTIFICATIONS?

23 A. YES, I DID.

24 Q. DR. BECKSON, WHY DID YOU OBTAIN FIVE BOARD
25 CERTIFICATIONS?

26 A. WELL, I HAVE A THIRST FOR KNOWLEDGE, AND I HAVE A
27 VERY UNDERSTANDING WIFE WHO IS WILLING TO LET ME GO THROUGH
28 A VARIETY OF DIFFERENT TRAINING PROCESSES.

4988

1 AND SOME OF IT WAS BY HAPPENSTANCE, IN THAT
2 DIFFERENT AREAS THAT I WORKED IN LED ME TO DEVELOP EXPERTISE
3 IN THOSE AREAS.

4 SO IT WASN'T ALL PLANNED, BUT I TOOK ADVANTAGE OF
5 THE DIFFERENT SITUATIONS I WAS IN. SO I DIDN'T WIND UP JUST
6 STICKING WITH THE FIRST SPECIALTY THAT I BECAME EXPERT IN.

7 Q. OKAY. I'M GOING TO ASK YOU A FEW QUESTIONS ABOUT
8 EACH OF YOUR AREAS THAT YOU ARE BOARD-CERTIFIED IN.

9 BEFORE WE DO THAT, LET ME ASK YOU JUST TO EXPLAIN
10 TO THE JURY THE TYPES OF ILLNESSES THAT A PSYCHIATRIST DEALS
11 WITH.

12 A. PSYCHIATRY DEALS WITH BEHAVIORAL DISORDERS AS A
13 GENERAL TOPIC. THOSE COULD BE PROBLEMS OF EMOTIONS,
14 PROBLEMS WITH THINKING, PROBLEMS WITH REPETITIVE BEHAVIORS
15 THAT CAUSE PROBLEMS FOR THE PERSON.

16 GENERALLY, YOU TREAT PEOPLE BECAUSE OF THEIR
17 DISTRESS OR BECAUSE OF THE PROBLEMS THEY HAVE FUNCTIONING,
18 EITHER AT HOME, IN THE WORKPLACE OR IN SOCIETY.

19 Q. OKAY. YOU BEGAN BY SAYING THE PSYCHIATRIST DEALS
20 WITH BEHAVIORAL DISORDERS; IS THAT RIGHT?

21 A. THAT'S CORRECT.

22 Q. IS ADDICTION A BEHAVIOR DISORDER?

23 A. YES, IT IS.

24 WHAT'S TRUE ABOUT ADDICTION AND ALL OF THE
25 DISORDERS THAT PSYCHIATRISTS TREAT IS THAT THEY ARE
26 IDENTIFIED AND CLASSIFIED ACCORDING TO THE BEHAVIOR THAT YOU
27 CAN SEE OR THAT YOU CAN ASK THE PERSON ABOUT. SO THERE IS
28 ESSENTIALLY NO MYSTERY ABOUT THE BEHAVIORAL DISORDERS THAT

4989

1 PSYCHIATRY TREATS.

2 OF LATE, THERE HAS BEEN MORE AND MORE RESEARCH IN
3 TERMS OF GETTING ADDITIONAL INFORMATION TO UNDERSTAND WHAT
4 THINGS GOING ON IN THE BRAIN MIGHT CORRELATE WITH THE THINGS
5 THAT ARE WELL DESCRIBED.

6 SO THERE IS A BRAIN-BEHAVIOR RELATIONSHIP THAT IS
7 IN THE PROCESS OF TRYING TO BE UNDERSTOOD BY PSYCHIATRISTS.

8 Q. LET ME BACK UP TO YOUR BOARD CERTIFICATION
9 AREAS.

10 ONE OF THEM WAS ADDICTION PSYCHIATRY; IS THAT
11 CORRECT?

12 A. THAT'S CORRECT.

13 Q. WOULD YOU EXPLAIN TO THE JURY WHAT TYPES OF
14 PROBLEMS YOU DEAL WITH IN THE FIELD OF ADDICTION
15 PSYCHIATRY.

16 A. I DEAL WITH A BROAD SPECTRUM OF ADDICTION

17 PROBLEMS, INCLUDING ADDICTION TO HEROIN, CRACK COCAINE,
18 AMPHETAMINES, ALCOHOLISM, CIGARETTE ADDICTION, ETCETERA.
19 Q. YOU'RE ALSO BOARD-CERTIFIED IN ADDICTION
20 MEDICINE; CORRECT?
21 A. THAT'S RIGHT.
22 Q. WHAT TYPES OF PROBLEMS DO YOU DEAL WITH IN
23 ADDICTION MEDICINE?
24 A. SIMILAR TYPES OF PROBLEMS. I ALSO DEAL WITH
25 BEHAVIORAL ADDICTIONS, AND THAT'S SORT OF A CUTTING-EDGE
26 AREA, WHERE YOU'RE TALKING ABOUT PEOPLE WHO HAVE SEXUAL
27 ADDICTIONS, GAMBLING ADDICTIONS, WHERE THEY'RE HAVING
28 ADDICTIVE PROBLEMS THAT ARE VERY MUCH LIKE THE PROBLEMS THAT
4990
1 YOU WOULD HAVE WITH COCAINE, BUT THERE'S NO DRUG INVOLVED.
2 YOU DON'T HAVE TO INGEST ANYTHING TO DEVELOP
3 THOSE PROBLEMS.
4 Q. DR. BECKSON, AS A PSYCHIATRIST WHO WORKS IN
5 ADDICTION PSYCHIATRY AND ADDICTION MEDICINE, I WANT TO BE
6 CLEAR. YOU TRY TO HELP PEOPLE OVERCOME THOSE TYPE OF
7 ADDICTIONS; IS THAT CORRECT?
8 A. THAT'S WHAT ITS ALL ABOUT.
9 Q. IS CIGARETTE SMOKING AND THE PROBLEMS THAT PEOPLE
10 SOMETIMES HAVE QUITTING CIGARETTE SMOKING ONE OF THE AREAS
11 THAT YOU DEAL WITH AS AN ADDICTION PSYCHIATRIST?
12 A. YES. AS A PSYCHIATRIST WORKING WITH PEOPLE WHO
13 HAVE BOTH CHEMISTRY OR DRUG ADDICTIONS AND BEHAVIORAL
14 ADDICTIONS, FREQUENTLY CIGARETTES IS A PART OF THE TOTAL
15 PICTURE, AND REALLY SOMETHING THAT SHOULD BE AND IS
16 ADDRESSED IN THE COURSE OF SOMEONE'S RECOVERY AND THEIR
17 TREATMENT.
18 ALSO, AS A GENERAL PSYCHIATRIST, SMOKING IS DONE
19 AT A HIGHER DEGREE OF FREQUENCY BY PEOPLE WITH MAJOR
20 PSYCHIATRIC PROBLEMS, SUCH AS SCHIZOPHRENIA AND DEPRESSION.
21 SO SMOKING IS A BIG PART OF THE EXPERIENCE OF
22 BEING A PSYCHIATRIST, ESPECIALLY AN ADDICTION PSYCHIATRIST.
23 Q. AS YOU PREPARED FOR AND QUALIFIED FOR YOUR BOARD
24 CERTIFICATIONS IN ADDICTION PSYCHIATRY AND ADDICTION
25 MEDICINE, WERE YOU REQUIRED TO STUDY AND MASTER SCIENTIFIC
26 KNOWLEDGE RELATED TO SMOKING AND ADDICTION?
27 A. YES, I WAS. AS I MENTIONED, IT'S AN IMPORTANT
28 PART OF ADDICTION MEDICINE AND ADDICTION PSYCHIATRY.
4991
1 IT'S PART OF THE CURRICULUM THAT YOU LEARN. IT'S
2 PART OF CONFERENCES ON PUT ON BY THE AMERICAN SOCIETY OF
3 ADDICTION MEDICINE. AND IN THE CERTIFICATION EXAMS, THERE
4 ARE SECTIONS DEALING WITH SMOKING AND NICOTINE.
5 Q. DR. BECKSON, IS ADDICTION A FORM OF DISEASE?
6 A. WELL, THERE IS A SO-CALLED DISEASE MODEL THAT HAS
7 BEEN PROMULGATED BY ALCOHOLICS ANONYMOUS. AND IN THAT
8 CONTEXT, IT CAN BE A USEFUL CONCEPT FOR PEOPLE IN A.A.
9 BUT I THINK THAT IT'S AN OVERCALL TO SAY
10 ADDICTION IS A DISEASE IN THAT IT'S A BEHAVIORAL DISORDER.
11 IT HAS BIOLOGICAL COMPONENTS TO IT, AND DEPENDING ON WHAT
12 YOU WANT TO DO WITH THAT CONCEPT OF DISEASE, IT CAN EITHER
13 BE HELPFUL OR HARMFUL TO SOMEONE WHO IS TRYING TO DEVELOP
14 THEIR SKILLS OF RECOVERY.
15 IF "DISEASE" MEANS YOU HAVE NOTHING TO SAY ABOUT
16 WHAT HAPPENS TO YOU AND YOU'RE GOING TO BE PASSIVE, THEN IT
17 CAN BE A HARMFUL CONCEPT.
18 IF "DISEASE" MEANS THIS IS SOMETHING THAT I HAVE
19 TO DEAL WITH, I HAVE TO TAKE APPROPRIATE STEPS TO DEAL WITH
20 IN ORDER TO BE HEALTHY, THEN DISEASE CAN BE A USEFUL
21 CONCEPT.

22 Q. LET ME BACK UP TO YOUR QUALIFICATIONS FOR A
23 MINUTE. I SKIPPED OVER YOUR BOARD CERTIFICATION IN
24 GERIATRIC PSYCHIATRY.
25 WOULD YOU EXPLAIN TO THE JURY WHAT THAT FIELD
26 INVOLVES.
27 A. GERIATRIC PSYCHIATRY INVOLVES DEALING WITH
28 PSYCHIATRIC OR BEHAVIORAL PROBLEMS IN ELDERLY PERSONS. A
4992
1 LARGE PART OF THAT INVOLVES DEMENTIA, SUCH AS ALZHEIMER'S
2 DISEASE. AND THAT HAS TO DO WITH THE LOSS OF ONE'S ABILITY
3 TO THINK AND REASON IN RESPONSE TO ONE'S ENVIRONMENT.
4 AND WITH THE AGING OF THE AMERICAN POPULATION,
5 GERIATRIC PSYCHIATRY ISSUES ARE BECOMING MORE AND MORE A
6 NATIONAL ISSUE.
7 Q. DR. BECKSON, YOU'RE INVOLVED AND ACTIVE IN A
8 NUMBER OF PROFESSIONAL ORGANIZATIONS RELATING TO THE
9 PRACTICE OF PSYCHIATRY, AREN'T YOU?
10 A. YES, I AM.
11 Q. RATHER THAN HAVE YOU LIST ALL THOSE, WHAT I'D
12 LIKE TO DO IS READ TO YOU A LIST I GOT OFF YOUR CV.
13 YOU TELL US WHETHER YOU'RE INVOLVED AND ACTIVE IN
14 THE ORGANIZATION.
15 A. OKAY.
16 Q. THE AMERICAN ACADEMY OF ADDICTION PSYCHIATRY?
17 A. I'M A MEMBER OF THAT ORGANIZATION.
18 Q. THE AMERICAN ACADEMY OF FORENSIC SCIENCE?
19 A. I'M A MEMBER OF THAT ORGANIZATION AS WELL.
20 Q. THE AMERICAN SOCIETY OF PSYCHIATRY AND THE LAW?
21 A. I'M A MEMBER OF THAT ORGANIZATION. AND I SERVE
22 ON THE ADDICTION PSYCHIATRY COMMITTEE OF THE AMERICAN
23 ACADEMY OF PSYCHIATRY AND THE LAW.
24 Q. THE NATIONAL COUNCIL ON SEXUAL ADDICTION AND
25 COMPULSIVITY?
26 A. I'M A MEMBER OF THAT ORGANIZATION.
27 Q. THE AMERICAN SOCIETY OF ADDICTION MEDICINE?
28 A. I'M A MEMBER OF THAT ORGANIZATION.
4993
1 Q. THE AMERICAN PSYCHIATRIC ASSOCIATION?
2 A. I'M A MEMBER OF THE APA.
3 Q. THE ASSOCIATION OF THREAT ASSESSMENT
4 PROFESSIONALS?
5 A. I'M A MEMBER OF THAT ORGANIZATION. I'M AN ACTIVE
6 MEMBER, WHICH MEANS THAT I DO A SIGNIFICANT PART OF MY
7 PROFESSIONAL ACTIVITIES IN THE ASSESSMENT OF RISK AND DANGER
8 IN VIOLENT INDIVIDUALS.
9 Q. OKAY. LET'S TALK ABOUT YOUR EDUCATION, WHERE YOU
10 WENT TO COLLEGE AND MEDICAL SCHOOL.
11 WOULD YOU TELL US.
12 A. I WENT TO HARVARD COLLEGE, WHERE I GRADUATED WITH
13 HIGH HONORS IN BIOCHEMICAL SCIENCES.
14 AFTER GRADUATION FROM COLLEGE, I ATTENDED CORNELL
15 UNIVERSITY MEDICAL COLLEGE IN NEW YORK, WHERE I OBTAINED MY
16 M.D. DEGREE.
17 Q. WHEN DID YOU GRADUATE FROM HARVARD?
18 A. I GRADUATED FROM HARVARD WITH MY BACHELOR'S
19 DEGREE IN 1980.
20 Q. AND YOUR MEDICAL DEGREE FROM CORNELL WAS IN 1985;
21 IS THAT CORRECT?
22 A. THAT'S CORRECT.
23 Q. TELL US ABOUT THE ADDITIONAL TRAINING YOU GOT IN
24 PSYCHIATRY AFTER YOU GRADUATED FROM MEDICAL SCHOOL.
25 A. THE FIRST THING THAT YOU DO, IN GENERAL, AFTER
26 GRADUATING FROM MEDICAL SCHOOL, WHICH CAN SERVE AS THE BASIS

27 FOR A LOT OF TV SHOWS, IS DOING AN INTERNSHIP, WHERE YOU
28 SPEND MOST OF YOUR TIME IN THE HOSPITAL ESSENTIALLY LEARNING

4994

1 HOW TO BE A DOCTOR, A PHYSICIAN, A MEDICAL DOCTOR.

2 THAT'S REALLY BEFORE YOU SPECIALIZE AND CHOOSE A
3 PARTICULAR AREA THAT YOU WANT TO DEVOTE EXTRA STUDY TO.

4 SO FOLLOWING MEDICAL SCHOOL, I DID A YEAR OF
5 INTERNSHIP AT THE NEW YORK HOSPITAL AND MEMORIAL
6 SLOAN-KETTERING CANCER CENTER.

7 FOLLOWING THAT YEAR, I CAME OUT TO CALIFORNIA AND
8 COMPLETED A RESIDENCY IN PSYCHIATRY. A RESIDENCY IS A
9 THREE-YEAR PROGRAM, WHERE YOU ARE TRAINED IN THE SPECIALTY
10 OF PSYCHIATRY.

11 ONCE YOU COMPLETE YOUR RESIDENCY, YOU'RE THEN
12 ELIGIBLE TO SIT FOR THE BOARD EXAMINATION. THAT'S WHAT IS
13 REFERRED TO AS A BOARD-CERTIFIED PSYCHIATRIST, IF YOU PASS
14 YOUR BOARDS.

15 AT THAT POINT YOU'RE A BOARD CERTIFIED
16 PSYCHIATRIST.

17 Q. LET ME GO BACK TO YOUR RESIDENCY FOR A MOMENT.
18 YOU DID YOUR RESIDENCY AT THE NEUROPSYCHIATRIC
19 INSTITUTE AT UCLA; IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. WHAT DOES "NEUROPSYCHIATRIC" MEAN?

22 A. "NEUROPSYCHIATRIC" REFERS TO THE CONVERGENCE OF
23 NEUROLOGY AND PSYCHIATRY, SINCE BOTH SPECIALTIES ESSENTIALLY
24 INVOLVE THE BRAIN AND HOW THE BRAIN WORKS AND HOW THE BRAIN
25 IS RELATED TO BEHAVIOR.

26 Q. AND YOU BECAME THE CHIEF RESIDENT AT UCLA?

27 A. I BECAME A CHIEF RESIDENT ON THE ADULT INPATIENT
28 PSYCHIATRY SERVICE.

4995

1 Q. AND AFTER YOU FINISHED YOUR RESIDENCY PROGRAM,
2 YOU RECEIVED ADDITIONAL TRAINING, DIDN'T YOU?

3 A. THAT'S CORRECT. BECAUSE OF MY INTEREST IN HOW
4 MEDICATIONS WORK IN THE BRAIN, I DECIDED TO TAKE A COUPLE OF
5 YEARS TO LEARN MORE ABOUT HOW THE BRAIN WORKS.

6 AND AT UCLA, I WAS LUCKY ENOUGH TO STUDY WITH ONE
7 OF THE FATHERS OF BEHAVIORAL NEUROLOGY, DR. FRANK BENSON,
8 WHO WAS RUNNING A NEUROBEHAVIOR TRAINING PROGRAM.

9 AND THAT PROGRAM TRAINS, GENERALLY, BOTH
10 NEUROLOGISTS AND PSYCHIATRISTS IN UNDERSTANDING
11 BRAIN-BEHAVIOR RELATIONSHIPS.

12 SO I DID THAT FOR TWO YEARS, AND COMPLETED THAT
13 PROGRAM.

14 Q. LET ME ASK YOU TO DEFINE ANOTHER TERM FOR US.
15 YOU USED THE PHRASE "BEHAVIORAL NEUROLOGY."

16 A. YES.

17 Q. AND CAN YOU EXPLAIN WHAT THAT MEANS.

18 A. WELL, NEUROLOGISTS DEAL WITH ALL SORTS OF NERVE
19 PROBLEMS. THEY CAN BE WHAT ARE CALLED PERIPHERAL NERVE
20 PROBLEMS OR THINGS THAT HAPPEN IN YOUR ARMS OR LEGS, LIKE
21 NUMBNESS AND TINGLING, OR THEY CAN DEAL WITH BACK PROBLEMS
22 WHERE YOU HAVE NERVE ROOT PROBLEMS THAT PEOPLE COMPLAIN
23 ABOUT WITH BACK PROBLEMS.

24 BEHAVIORAL NEUROLOGY DEALS WITH, ESSENTIALLY,
25 FROM THE NECK UP, PROBLEMS THAT OCCUR IN THE BRAIN DUE TO
26 DISEASE OR INJURY THAT THEN CHANGE THE PERSON IN TERMS OF
27 THEIR PERSONALITY OR THEIR BEHAVIOR OR HOW THEY FEEL.

28 Q. DOES BEHAVIORAL NEUROLOGY ALSO DEAL WITH THE

4996

1 INTERACTION BETWEEN DRUGS AND THE BRAIN?

2 A. YES, IT DOES.

3 Q. THIS EXTRA TRAINING YOU GOT AFTER YOUR RESIDENCY,
4 IS THAT WHAT IS KNOWN AS A FELLOWSHIP?

5 A. THAT'S REFERRED TO AS FELLOWSHIP TRAINING.

6 Q. AFTER YOU COMPLETED YOUR FELLOWSHIP, YOU RECEIVED
7 A FEDERAL RESEARCH GRANT, DIDN'T YOU?

8 A. I WAS LUCKY ENOUGH TO BE HIRED AS PART OF A
9 START-UP PROJECT BY THE NATIONAL INSTITUTE ON DRUG ABUSE,
10 WHICH HAD JUST INITIATED A NEW MEDICATION DEVELOPMENT
11 DIVISION, AUTHORIZED BY CONGRESS TO ADDRESS THE
12 WELL-APPRECIATED PROBLEM OF COCAINE AND CRACK ADDICTION.

13 Q. OKAY. WOULD YOU REMIND THE JURY WHAT THE
14 NATIONAL INSTITUTE OF DRUG ABUSE IS.

15 A. IN WASHINGTON -- OR ACTUALLY, IN MARYLAND, THERE
16 ARE THE NATIONAL INSTITUTES OF HEALTH. IT'S ESSENTIALLY A
17 GOVERNMENT RESEARCH ORGANIZATION TO LOOK INTO A VARIETY OF
18 HUMAN DISEASES. SO THERE ARE A VARIETY OF NATIONAL
19 INSTITUTES THAT MAKE UP THE NATIONAL INSTITUTES OF HEALTH.
20 FOR EXAMPLE, THERE'S ONE THAT DEALS WITH BLOOD DISEASES.

21 THERE'S ALSO ONE THAT DEALS SPECIFICALLY WITH
22 DRUG ADDICTION ISSUES, AND THAT'S CALLED THE NATIONAL
23 INSTITUTE ON DRUG ABUSE.

24 Q. LET ME GO BACK TO THIS RESEARCH GRANT YOU
25 RECEIVED.

26 WAS THERE A PARTICULAR ASPECT OF THE PROBLEM OF
27 COCAINE ADDICTION THAT YOU WERE DEALING WITH PRIMARILY UNDER
28 YOUR RESEARCH GRANT?

4997

1 A. YES. WE DID SOME IMPORTANT RESEARCH THAT LED TO
2 THE FDA APPROVAL OF LONG-ACTING METHADONE.

3 THE FOCUS OF THE NATIONAL INSTITUTE ON DRUG ABUSE
4 PROJECT WAS LOOKING FOR MEDICATION THAT WOULD HELP WITH THE
5 TREATMENT OF COCAINE, SPECIFICALLY, CRACK ADDICTION, AND TO
6 TRY TO LEARN ABOUT WHAT'S GOING ON IN THE BRAIN OF CRACK
7 ADDICTS THAT MIGHT HELP US DEVELOP THE MEDICATION.

8 Q. UNDER YOUR RESEARCH GRANT, WERE YOU ALSO INVOLVED
9 IN SETTING UP AND RUNNING A TREATMENT PROGRAM FOR PEOPLE WHO
10 WERE HAVING SUBSTANCE ABUSE PROBLEMS?

11 A. THE SIDE BENEFIT OF HAVING GOTTEN INVOLVED IN
12 THAT RESEARCH WAS I WAS FORCED TO BECOME A CLINICIAN,
13 TREATING PEOPLE WITH VERY SERIOUS ADDICTION PROBLEMS,
14 ALCOHOLISM, CRACK COCAINE ADDICTION, HEROIN ADDICTION.

15 AND PART OF MY RESPONSIBILITIES BEGAN AS SPENDING
16 TIME BEING A TREATING PHYSICIAN. ULTIMATELY, I BECAME THE
17 DIRECTOR OF THE ALCOHOL AND DRUG TREATMENT PROGRAM.

18 AND SUBSEQUENT TO THAT, I ACTUALLY CREATED SOME
19 NEW, NOVEL TYPES OF PROGRAMS FOR THE DEPARTMENT OF VETERANS
20 AFFAIRS.

21 Q. WHAT YEARS WERE YOU WORKING UNDER YOUR RESEARCH
22 GRANT?

23 A. THAT WOULD BE FROM JULY OF 1991. I WAS INVOLVED
24 ALL THE WAY UP THROUGH '97, ALTHOUGH, ALONG THE WAY, MY
25 SALARY MOVED OVER TO THE DEPARTMENT OF VETERANS AFFAIRS, AND
26 I TRANSITIONED FROM BEING A FULL-TIME NIDA EMPLOYEE TO A
27 FULL-TIME VA EMPLOYEE, DESPITE THE FACT THAT THE RESEARCH
28 CONTINUED NONETHELESS.

4998

1 Q. CAN YOU ESTIMATE FOR THE JURY HOW MANY PATIENTS
2 WITH ADDICTION PROBLEMS YOU WERE INVOLVED WITH IN TREATING
3 DURING THOSE SIX YEARS THAT YOU WERE WORKING UNDER THE
4 RESEARCH GRANT?

5 A. THAT WOULD BE IN THE SEVERAL HUNDRED TO BETWEEN
6 ONE AND 2,000 PATIENTS.

7 Q. DR. BECKSON, DURING THE YEARS THAT YOU WERE

8 WORKING UNDER THE RESEARCH GRANT TO TRY TO DEVELOP
9 MEDICATIONS TO ASSIST PEOPLE WHO HAD ADDICTION PROBLEMS,
10 WERE YOU SUCCESSFUL IN DEVELOPING MEDICATIONS?
11 A. AS I MENTIONED, WE WERE SUCCESSFUL IN TERMS OF
12 DEVELOPING A LONG-ACTING FORM OF METHADONE, WHICH IS USED TO
13 MAINTAIN PEOPLE ON METHADONE IN PLACE OF HEROIN.
14 BUT WHEN IT CAME TO TREATING CRACK COCAINE
15 ADDICTION, WE WERE, AS WAS EVERYONE, VERY DISHEARTENED BY
16 THE FAILURE TO DEVELOP MEDICATION THAT WOULD IMPACT ON THE
17 ILLNESS.

18 Q. WHAT TYPE OF PROBLEMS DID YOU RUN INTO IN
19 ATTEMPTING TO DEVELOP CRUCIAL DRUGS THAT COULD BE USED TO
20 TREAT COCAINE ADDICTS?

21 A. GETTING INTO THE FIELD, THERE WAS A LOT OF
22 EXCITEMENT, BECAUSE IN THE '80S, THERE WAS A LOT OF RESEARCH
23 BEING DONE IN RATS AND OTHER ANIMALS TO SUGGEST THAT WE WERE
24 GETTING A BETTER UNDERSTANDING OF WHAT WAS GOING IN THE
25 BRAIN IN THESE RAT MODELS.

26 UNFORTUNATELY, WHEN WE STARTED TRANSLATING WHAT
27 WE KNEW ABOUT RATS INTO CHOOSING MEDICATIONS THAT SHOULD
28 WORK, WHAT WE FOUND WAS THEY WEREN'T WORKING.

4999

1 AND WHAT I LEARNED AS A CLINICIAN WAS THAT
2 ADDICTION IS A TERRIBLY COMPLEX BEHAVIOR DISORDER, AND
3 SIMPLE THINGS LIKE THE CONCEPT THAT ALL YOU HAVE TO DO IS
4 BLOCK DOPAMINE OR REPLACE DOPAMINE JUST SIMPLY ARE NOT
5 REALLY EVEN THE BEGINNING OF THE STORY.

6 AND SO THEY'RE OF IMPORTANCE, AND IN THE FUTURE
7 MAY TURN OUT TO BE HELPFUL, BUT WHAT WOULD GET PEOPLE WELL
8 WAS GOOD CLINICAL TREATMENT.

9 AND THAT GENERALLY HAD TO DO WITH HELPING TO
10 SUPPORT PEOPLE'S MOTIVATION, GIVING THEM ADVICE AND COUNSEL
11 ON HOW TO PROCEED WITH THE RECOVERY PROGRAM, AND SO FORTH.

12 Q. DURING YOUR FELLOWSHIP, YOU WERE PRIMARILY
13 INVOLVED WITH STUDYING ISSUES RELATED TO THE BRAIN AND
14 BEHAVIOR; IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. DID YOU CONTINUE DOING THAT TYPE OF RESEARCH
17 UNDER YOUR NIDA RESEARCH GRANT?

18 A. YES, I DID. THAT WAS THE PURPOSE OF MY INTEREST
19 IN GOING OVER TO WORK UNDER THE NIDA GRANT WAS THAT THEY
20 WERE VERY EXCITED AND INTERESTED IN THIS CONCEPT THAT WE'RE
21 NOW GOING TO GET VERY BIOLOGICAL IN THE WAR ON DRUGS, AND WE
22 WERE GOING TO GO IN THERE AND USE ALL OF THIS RESEARCH
23 INFORMATION FROM THE '80S TO DEVELOP MEDICATIONS IN THE
24 '90S.

25 IN FACT, THE '90S WERE DUBBED THE DECADE OF THE
26 BRAIN. AND SO THEY WERE VERY HEADY TIMES IN THE EARLY
27 '90S. AND WE WERE GOING TO GRAB THIS ADDICTION PROBLEM BY
28 THE TAIL AND REALLY COME UP WITH MEDICATION BASED ON OUR

5000

1 UNDERSTANDING OF THE BRAIN.

2 Q. UNDER YOUR NIDA RESEARCH GRANT, DID YOU STUDY THE
3 MANNER IN WHICH DRUGS INTERACT WITH RECEPTORS IN THE BRAIN?

4 A. YES, I DID.

5 Q. AND DID YOU STUDY -- THE JURY HAS HEARD A LITTLE
6 BIT HIS AND WE'LL TALK MORE TODAY -- DID YOU STUDY DOPAMINE
7 PATHWAYS IN REWARD CENTERS IN THE BRAIN?

8 A. YES, I DID. IN FACT, THE WHOLE CONCEPT OF THE
9 REWARD PATHWAYS AND DOPAMINE WERE PART OF THOSE EARLY HEADY
10 DAYS, ABOUT HOW WE WERE GOING TO REALLY TAKE HOLD AND CURE
11 THIS PROBLEM.

12 Q. YOU ARE REFERRING NOW TO THE TIME PERIOD IN THE

13 EARLY '90S?

14 A. YES, THE TIME PERIOD WHEN THE MEDICATION
15 DEVELOPMENT DIVISION WAS SET UP BY CONGRESS AND NIDA.

16 Q. UNDER YOUR RESEARCH GRANT, DID YOU ALSO STUDY
17 GENERALLY HOW DRUGS AFFECT THINKING AND BRAIN FUNCTIONING?

18 A. YES, I DID. THAT HAS BEEN AN ISSUE THAT GOES
19 BACK TO RESIDENCY TRAINING, CONTINUED INTO MY BEHAVIORAL
20 NEUROLOGY FELLOWSHIP TRAINING, AND THEN INTO MY WORK IN THE
21 NIDA GRANT AND IN MY FORENSIC PSYCHIATRY WORK.

22 Q. LET'S GET PAST THE NIDA GRANT NOW.
23 IF YOU WOULD TELL THE JURY HOW YOU CURRENTLY
24 SPEND YOUR PROFESSIONAL TIME.

25 A. I COMBINE WORKING FOR THE DEPARTMENT OF VETERANS
26 AFFAIRS WITH A PRIVATE PRACTICE IN LOS ANGELES.

27 AT THE DEPARTMENT OF VETERANS AFFAIRS, I'M THE
28 MEDICAL DIRECTOR OF THE SCIENTIFIC INTENSIVE CARE UNIT.

5001

1 THAT'S WHERE WE TREAT THE MOST ACUTELY ILL PATIENTS, WHO
2 GENERALLY ARE BROUGHT IN BY THE POLICE OR BY FAMILY MEMBERS.

3 AND WE TREAT A VARIETY OF ILLNESSES, SUCH AS
4 SCHIZOPHRENIA, DRUG ABUSE, BIPOLAR DISORDER,
5 MANIC-DEPRESSIVE ILLNESS.

6 A LARGE PART OF WHAT I DO THERE IS FORENSIC IN
7 NATURE. SINCE WE HAVE TO EVALUATE COMPETENCY AND DANGER ALL
8 THE TIME UNDER THE CIVIL LAWS OF THE STATE OF CALIFORNIA FOR
9 THE MENTAL HEALTH COURT.

10 I ALSO HAVE A PRIVATE PRACTICE, WHICH IS
11 PRIMARILY ADDICTION WORK, DRUG ADDICTION AND BEHAVIORAL
12 ADDICTIONS, LIKE EATING, GAMBLING, SEXUAL ADDICTION.

13 AND I ALSO DO SOME PRIVATE PRACTICE FORENSIC
14 CONSULTATION.

15 Q. IN BOTH YOUR CLINICAL AND PRIVATE PRACTICES, DO
16 YOU CONTINUE TO TREAT AND ATTEMPT TO HELP PEOPLE WITH DRUG
17 ADDICTIONS?

18 A. THAT'S THE MAIN FOCUS OF MY WORK.

19 Q. ABOUT WHAT PERCENTAGE OF YOUR CLINICAL PRACTICE
20 IS DEVOTED TO HELPING PEOPLE WITH ILLNESSES RELATED TO
21 ADDICTION?

22 A. IF WE SAY EVERYTHING I DO IS 100 PERCENT, AND
23 USUALLY, I WORK 50 OR 60 HOURS A WEEK, ABOUT 40 PERCENT OF
24 THAT HAS TO DO WITH TREATING ADDICTIONS OF VARIOUS TYPES.

25 Q. I WANT TO STAY IN THE PRESENT NOW, HOW YOU SPEND
26 YOUR TIME.

27 DO YOU ALSO HAVE TEACHING RESPONSIBILITIES?

28 A. YES. I'M A CLINICAL FACULTY MEMBER AT THE UCLA

5002

1 SCHOOL OF MEDICINE, WHICH MEANS THAT I SPEND A LOT OF TIME
2 TRAINING RESIDENTS WHO ARE LEARNING TO BE PSYCHIATRISTS.

3 I ALSO TRAIN RESIDENTS WHO HAVE COMPLETED THEIR
4 RESIDENCY, GONE ON TO A FELLOWSHIP IN FORENSIC PSYCHIATRY.

5 Q. ABOUT WHAT PERCENTAGE OF YOUR TIME DO YOU SPEND
6 TEACHING NOW?

7 A. WELL, OUT OF MY TOTAL TIME, IT'S PROBABLY ABOUT
8 10 OR 15 PERCENT IS SPENT TEACHING.

9 Q. YOU MENTIONED THIS A COUPLE OF TIMES. LET ME ASK
10 YOU TO DEFINE FOR US, AMONG YOUR BOARD CERTIFICATIONS, ONE
11 OF THEM IS IN FORENSIC PSYCHIATRY; IS THAT CORRECT?

12 A. THAT'S CORRECT.

13 Q. WOULD YOU EXPLAIN TO US WHAT FORENSIC PSYCHIATRY
14 IS?

15 A. FORENSIC PSYCHIATRY IS A SPECIALIZED BRANCH OF
16 PSYCHIATRY THAT TRIES TO APPLY PSYCHIATRIC KNOWLEDGE AND
17 INFORMATION TO ISSUES OF A LEGAL NATURE.

18 MOST FREQUENTLY, IT INVOLVES ASSESSING ISSUES OF
19 COMPETENCE, DANGEROUSNESS AND SO FORTH.

20 Q. WHAT DO YOU MEAN BY "COMPETENCE"?

21 A. COMPETENCE REFERS TO A PERSON'S CAPACITY TO
22 THINK, UNDERSTAND, REASON, AND MAKE DECISIONS IN THEIR OWN
23 BEHALF.

24 AND THAT'S FREQUENTLY AN ISSUE IN PSYCHIATRY IN
25 THE INTENSIVE CARE UNIT WHERE I WORK, AND IN A VARIETY OF
26 LEGAL SETTINGS.

27 Q. I THINK YOU TOLD US IN RESPONSE TO AN EARLIER
28 QUESTION, THIS FORENSIC PSYCHIATRY PRACTICE ALSO INVOLVES

5003

1 EVALUATING PATIENTS TO DETERMINE WHETHER OR NOT THEY'RE
2 RESPONSIBLE FOR THEIR BEHAVIOR; IS THAT CORRECT?

3 A. YES. COMPETENCE AND RESPONSIBILITY ARE RELATED
4 CONCEPTS, IN THAT IF SOMEONE HAS THE CAPACITY TO MAKE
5 DECISIONS FOR THEMSELVES, THEN THEY'RE GENERALLY HELD
6 RESPONSIBLE FOR THE DECISIONS THEY MAKE, WHETHER THEY ARE
7 GOOD OR BAD DECISIONS.

8 Q. DOES DRUG ADDICTION INTERFERE WITH A PATIENT'S
9 ABILITY TO BE RESPONSIBLE FOR THEIR ACTIONS?

10 MS. CHABER: I OBJECT. THAT'S SORT OF VAGUE AND
11 OVERBROAD.

12 THE COURT: IT IS VAGUE.

13 WHEN YOU SAY "RESPONSIBLE," IN WHAT SENSE?

14 MR. FURR: IN THE SENSE THAT THE DOCTOR JUST
15 DEFINED RESPONSIBILITY, AS HE EVALUATES IT AS A FORENSIC
16 PSYCHIATRIST.

17 THE COURT: ALL RIGHT. ANY OBJECTION TO THAT?

18 MS. CHABER: WELL, IT'S ALSO OVERBROAD.

19 THE COURT: I UNDERSTAND.

20 WHAT KIND OF DRUG ADDICTION ARE WE TALKING
21 ABOUT?

22 MS. CHABER: THANK YOU, YOUR HONOR.

23 THE COURT: WHY DON'T YOU JUST MAKE THE QUESTION
24 MORE SPECIFIC.

25 MR. FURR: OKAY. I WILL.

26 Q. DR. BECKSON, DOES SMOKING CIGARETTES INTERFERE
27 WITH A SMOKER'S ABILITY TO MAKE A DECISION AS TO WHETHER OR
28 NOT TO CONTINUE SMOKING?

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1 A. NO, IT DOESN'T. IN FACT, NEITHER DOES HARD DRUG
2 ADDICTION, WITH THE EXCEPTION OF SOMEONE WHO IS ACUTELY
3 INTOXICATED OR SOMEONE WHO HAS, FROM EXTENSIVE USE, BRAIN
4 DAMAGE, SO THAT THEY'RE DEMENTED, LIKE AN ALZHEIMER'S
5 PATIENT.

6 Q. DR. BECKSON, HAVE YOU TESTIFIED IN COURT
7 PREVIOUSLY AS A FORENSIC PSYCHIATRIST?

8 A. I HAVE ON OCCASION.

9 Q. CAN YOU GIVE US AN IDEA OF HOW MANY TIMES YOU'VE
10 DONE SO?

11 A. WELL, AS FAR AS ACTUALLY TESTIFYING, I WAS
12 THINKING ABOUT THAT YESTERDAY, AND IT WORKS OUT TO BE MAYBE
13 ABOUT TWICE A YEAR, GOING BACK FOR THE LAST 10 OR 11 YEARS.

14 Q. DO YOU TEACH PSYCHIATRY RESIDENTS AND OTHER
15 STUDENTS ABOUT FORENSIC PSYCHIATRY?

16 A. YES, I DO. I'M CONSIDERED A MEMBER OF THE
17 FORENSIC FACULTY AT THE UCLA SCHOOL OF MEDICINE.

18 Q. AND DO YOU INSTRUCT THEM IN HOW TO CONDUCT
19 CLINICAL ASSESSMENTS OR EVALUATIONS FOR FORENSIC PSYCHIATRY
20 PURPOSES?

21 A. YES, I DO.

22 Q. BY THE WAY, DO YOU HAVE AN IDEA AS TO HOW MANY

23 CASES IN WHICH YOU HAVE CONDUCTED A CLINICAL ASSESSMENT OR
24 EVALUATION FOR FORENSIC PURPOSES?
25 A. I DON'T KEEP COUNT, BUT IT'S HUNDREDS.
26 Q. OKAY. DR. BECKSON, CAN YOU TELL US WHAT THE TERM
27 "ADDICTION" MEANS.
28 A. WELL, THAT'S A LOADED QUESTION, BECAUSE
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1 "ADDICTION" MEANS MANY DIFFERENT THINGS. IT REALLY DEPENDS
2 ON WHO IS SAYING IT, FOR WHAT PURPOSE AND IN WHAT CONTEXT.
3 Q. ARE YOU FAMILIAR WITH THE DEFINITIONS OF
4 "ADDICTION" THAT HAVE BEEN USED BY THE SCIENTIFIC COMMUNITY
5 AT VARIOUS POINTS IN TIME OVER THE LAST 40 YEARS?
6 A. YES, I AM.
7 Q. ARE YOU FAMILIAR WITH THE DEFINITION OF
8 "ADDICTION" THAT WAS USED BY THE SURGEON GENERAL IN THE
9 1964 SURGEON GENERAL'S REPORT?
10 A. YES, I AM.
11 Q. THE JURY HAS HEARD ABOUT IT, BUT IT'S BEEN A
12 WHILE. COULD YOU BRIEFLY REFRESH IT AS TO THE DEFINITION OF
13 "ADDICTION" THAT THE SURGEON GENERAL USED IN 1964.
14 A. IN 1964, THE SURGEON GENERAL CANVASSED VARIOUS
15 EXPERTS IN THE FIELD TO DETERMINE, ACCORDING TO THE STATE OF
16 THE ART AND SCIENCE AND RESEARCH AND CLINICAL CARE, WHAT
17 WOULD BE THE MOST APPROPRIATE DEFINITION OF "ADDICTION."
18 WHAT THEY FOUND WAS THAT DIFFERENT DRUGS THAT
19 WERE USED WOULD FALL INTO A CATEGORY THEY TERMED "ADDICTION"
20 OR A CATEGORY THEY TERMED "HABITUATION."
21 SO YOU EITHER HAD AN HABITUATION OR YOU HAD A
22 HABIT.
23 THE WAY THEY DEFINED IT AT THAT TIME WAS PRETTY
24 MUCH BASED ON THE MEDICAL MODEL THAT WAS USED DURING THE
25 '50S.
26 AND WHAT THAT SAID IS, FIRST OF ALL, IF SOMETHING
27 IS GOING TO BE ADDICTING, IT HAD TO BE INTOXICATING. IF IT
28 DIDN'T INTOXICATE YOU, IT WASN'T AN ADDICTIVE DRUG. SO THAT
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1 WAS THE FIRST THRESHOLD TO DETERMINE ADDICTION.
2 ON TOP OF THAT, AN ADDICTING DRUG HAD TO HAVE THE
3 ABILITY TO CAUSE COMPULSIVE USE. AND THEY DEFINED
4 "COMPULSIVE" AS ESSENTIALLY THE PERSON WAS WILLING TO DO
5 JUST ABOUT ANYTHING, INCLUDING CRIMINAL ACTIVITY, TO GET
6 THEIR NEXT FIX.
7 SO THE COMMON IDEA OF THE HEROIN ADDICT, WHO WAS
8 GOING TO ROB SOMEONE IN ORDER TO GET MONEY TO BUY DRUGS.
9 ON TOP OF THAT, THEY REQUIRED THAT, TO BE CALLED
10 ADDICTING, THE ADDICTING DRUG HAD TO CAUSE TOLERANCE AND
11 WITHDRAWAL. IT HAD TO CREATE A WITHDRAWAL SYNDROME THAT WAS
12 THE SAME AS BARBITURATES, ALCOHOL AND HEROIN. AND THAT'S A
13 VERY SPECIFIC TYPE OF LIFE-THREATENING WITHDRAWAL, WHICH IS
14 CALLED CLASSICAL WITHDRAWAL.
15 IF THE DRUG WAS NOT INTOXICATING, IF IT DIDN'T
16 CAUSE COMPULSIVE USE, EVEN THOUGH IT MIGHT CAUSE REPETITIVE
17 USE -- IT'S HARD TO STOP -- IF IT DIDN'T CAUSE THAT
18 CLASSICAL TYPE OF WITHDRAWAL, THEN IT WOULD BE CALLED
19 HABITUATING.
20 Q. DR. BECKSON, I'M GOING TO ASK YOU TO EXPRESS A
21 NUMBER OF OPINIONS TODAY. WHENEVER I DO THAT, I WANT YOU TO
22 UNDERSTAND THAT I'M ASKING YOU TO EXPRESS THE OPINIONS THAT
23 YOU HOLD WITH A REASONABLE DEGREE OF MEDICAL CERTAINTY.
24 OKAY?
25 A. I UNDERSTAND THAT.
26 Q. IF I ASK YOU FOR AN OPINION THAT YOU CANNOT
27 EXPRESS WITH THAT LEVEL OF CERTAINTY, WILL YOU LET US KNOW?

28 A. I CERTAINLY WILL.

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1 Q. DR. BECKSON, BASED ON WHAT IS KNOWN TODAY ABOUT
2 NICOTINE AND SMOKING BEHAVIOR, DO YOU HAVE AN OPINION AS TO
3 WHETHER OR NOT NICOTINE IS ADDICTIVE, AS THAT TERM WAS USED
4 BY THE SURGEON GENERAL IN 1964?

5 A. IF YOU USE THE SURGEON GENERAL'S REPORT, AND
6 APPLY EVEN INFORMATION THAT WE HAVE AVAILABLE IN THE YEAR
7 2000, YOU'RE BASICALLY BOUND BY THAT DECISION MADE IN 1964,
8 AND THEREFORE NICOTINE BECOMES AN HABITUATING SUBSTANCE,
9 EVEN IN THE YEAR 2000, IF YOU ARE GOING TO STICK WITH THAT
10 DEFINITION.

11 Q. LET'S JUMP FORWARD IN TIME TO THE 1988 SURGEON
12 GENERAL'S REPORT.

13 ARE YOU FAMILIAR WITH THAT REPORT, SIR?

14 A. YES, I AM.

15 Q. (WRITING ON BOARD)

16 ARE YOU FAMILIAR WITH THE DEFINITION OF
17 "ADDICTION" THAT WAS USED IN THAT REPORT?

18 A. YES, I AM.

19 Q. THAT WAS THE REPORT IN WHICH THE SURGEON GENERAL
20 FOR THE FIRST TIME CLASSIFIED NICOTINE AS AN ADDICTIVE
21 SUBSTANCE; IS THAT CORRECT?

22 A. THAT'S CORRECT.

23 Q. THE JURY HAS ALREADY HEARD ABOUT THIS, BUT COULD
24 YOU BRIEFLY REFRESH US AS TO THE DEFINITION OF "ADDICTION"
25 THAT WAS USED IN THE 1988 SURGEON GENERAL'S REPORT.

26 A. IN 1988, THE DECISION BY THE COMMITTEE THAT WROTE
27 THE SURGEON GENERAL'S REPORT AT THAT TIME DECIDED THAT THEY
28 WOULD REPLACE THE REQUIREMENT FOR INTOXICATION FOR THE

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1 REQUIREMENT THAT SOMETHING BE PSYCHOACTIVE.

2 "PSYCHOACTIVE" MEANS IT CAN HAVE SOME EFFECT ON
3 HOW YOU FEEL, BASICALLY. IT'S A LESS STRINGENT TYPE OF
4 REQUIREMENT.

5 INTOXICATION REQUIRES THAT YOU BASICALLY HAVE
6 YOUR FACULTIES INTERFERED WITH. "PSYCHOACTIVE" MEANS THAT
7 YOU CAN FEEL IT.

8 IN ADDITION TO THAT, THEY CHANGED THE DEFINITION
9 OF "COMPULSIVE," BECAUSE THAT WAS THE SECOND REQUIREMENT IN
10 THE 1988 DEFINITION. AND "COMPULSIVE" IN 1988 WAS CHANGED
11 TO MEAN YOU REPEAT YOUR BEHAVIOR EVEN THOUGH IT MAY BE RISKY
12 BEHAVIOR.

13 FINALLY, WHAT THEY DID WAS THEY DREW HEAVILY FROM
14 THOSE RAT MODELS THAT I WAS TALKING ABOUT EARLIER THAT WERE
15 VERY BIG IN THE EARLY AND MID-80S, AND SAID THAT DRUGS, TO
16 BE ADDICTIVE, HAD TO PRODUCE DRUG-REINFORCED BEHAVIOR. THAT
17 MEANS THAT YOU LEARNED TO DO CERTAIN BEHAVIORS IN ORDER TO
18 TAKE YOUR DRUGS. THAT'S WHERE THEY LEFT IT.

19 THERE WAS A REQUIREMENT FOR WITHDRAWAL AS WELL.
20 SO IT WAS A MUCH LOOSER DEFINITION THAN THE 1964 DEFINITION.

21 Q. ARE YOU AWARE OF WHETHER OR NOT THERE WERE
22 PSYCHIATRISTS INVOLVED IN THE PRODUCTION OF THE 1988 SURGEON
23 GENERAL'S REPORT?

24 A. WELL, FOR ME, ONE OF THE MOST DISHEARTENING
25 THINGS WAS THE REALIZATION THAT OF ALL THE EDITORS, ONLY --
26 AND THERE WERE DOZENS OF EDITORS OF THAT REPORT -- THERE
27 WERE ONLY TWO PSYCHIATRISTS IN THAT TOTAL GROUP OF PEOPLE
28 WHO WERE MAKING THAT DEFINITION UP.

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1 Q. DR. BECKSON, DO YOU HAVE AN OPINION AS TO WHETHER
2 OR NOT NICOTINE IS AN ADDICTIVE SUBSTANCE IF YOU USED THE
3 DEFINITION OF "ADDICTION" USED BY THE SURGEON GENERAL IN THE

4 1988 REPORT?
5 A. YES. ACCORDING TO THE 1988 DEFINITION, NICOTINE
6 IS AN ADDICTIVE SUBSTANCE.
7 Q. AND YOU TAKE NO ISSUE WITH THAT?
8 A. NOT AT ALL.
9 Q. LET ME ALSO ASK YOU TO REMIND THE JURY WHAT THE
10 DMS -- YOU'RE FAMILIAR WITH DSM-IV, AREN'T YOU?
11 A. YES, I AM.
12 Q. WOULD YOU REMIND THE JURY WHAT THE DSM-IV IS.
13 A. THE "IV" PART REFERS TO THE FOURTH EDITION, AND
14 THE "DSM" PART IS SHORT FOR "DIAGNOSTIC AND STATISTICAL
15 MANUAL OF MENTAL DISORDERS."
16 IT IS A BOOK THAT CATALOGS AND DESCRIBES CRITERIA
17 FOR DIFFERENT MENTAL DISORDERS. AND THE PURPOSE FOR DOING
18 THAT IS BECAUSE THERE HAVE BEEN SO MANY THEORIES AND SO MANY
19 WAYS OF EXPRESSING THINGS PERTAINING TO PSYCHIATRY AND
20 BEHAVIORAL DISORDERS THAT THERE WAS A DECISION MADE THAT WE
21 ARE ALL GOING TO USE THE SAME AGREED-UPON LANGUAGE TO
22 COMMUNICATE WITH ONE ANOTHER, SO THAT WE DON'T HAVE
23 CONFUSION.
24 Q. DOES THE DSM-IV USE THE TERM "ADDICTION"?
25 A. NO, IT DOES NOT.
26 Q. WHAT TERM DOES THE DSM-IV USE TO DESCRIBE PEOPLE
27 WHO HAVE DEVELOPED SUBSTANCE ABUSE PROBLEMS?
28 A. IT USES TWO TERMS, DEPENDING ON THE NATURE OF THE
5010
1 PROBLEM IN TERMS OF PROBLEMATIC, REPETITIVE USE OF A
2 SUBSTANCE.
3 ON THE ONE HAND, THERE ARE SUBSTANCE ABUSE
4 PROBLEMS, AND THERE ARE SUBSTANCE DEPENDENCE PROBLEMS.
5 Q. IS IT FAIR TO SAY THAT THE DSM-IV USES THE TERM
6 "DEPENDENCE" IN PLACE OF THE TERM "ADDICTION"?
7 A. IT'S FAIR TO SAY THAT THE DSM-IV DEFINITION OF
8 "SUBSTANCE DEPENDENCE" IS REFLECTING THE CONCEPTS THAT ARE
9 CAPTURED IN THE TERM "ADDICTION."
10 Q. DO YOU KNOW WHY THE TERM "DEPENDENCE" IS USED IN
11 THE DSM-IV AS OPPOSED TO THE TERM "ADDICTION"?
12 A. WELL, FOLLOWING THE 1964 SURGEON GENERAL'S
13 REPORT, THERE WAS A DESIRE TO GET AWAY FROM THE CONFUSION
14 PERTAINING TO THE WORD "ADDICTION."
15 "ADDICT" HAD A LOT OF SOCIAL AND MORAL
16 CONNOTATIONS IN THE 20TH CENTURY. OFTEN "ADDICTION" WAS
17 USED TO LABEL PEOPLE, STIGMATIZE THEM, TO IMPLY THAT PEOPLE
18 WHO WERE ADDICTS HAD A MORAL BANKRUPTCY, WERE EVIL, WERE A
19 CRIMINAL PERSONALITY. THERE WAS SOMETHING WRONG WITH THEM.
20 AND BETWEEN ALL THE CONFUSION ABOUT WHAT IT MEANT
21 SCIENTIFICALLY, AND THE SOCIAL STIGMA, THERE WAS A DESIRE TO
22 GET AWAY FROM THAT AND START FRESH AND DEFINE, AS A MEDICAL
23 AND BEHAVIORAL TERM, "SUBSTANCE DEPENDENCE."
24 Q. DR. BECKSON, DO YOU HAVE AN OPINION AS TO WHETHER
25 OR NOT NICOTINE CAN BE A DEPENDENCE-PRODUCING SUBSTANCE
26 UNDER THE DSM-IV?
27 A. YES, IT CAN.
28 Q. DR. BECKSON, DO YOU ALSO TREAT A GROUP OF
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1 PSYCHIATRIC PROBLEMS KNOWN AS PROCESS ADDICTIONS?
2 A. YES, I DO.
3 Q. WOULD YOU EXPLAIN TO THE JURY WHAT PROCESS
4 ADDICTIONS ARE.
5 A. THAT'S AN INTERESTING TERM THAT COMES FROM THE
6 IDEA THAT A PROCESS ADDICTION IS THE ADDICTION THAT HAS TO
7 DO WITH A BEHAVIORAL PROCESS RATHER THAN A DRUG THAT PEOPLE
8 INGEST.

9 THAT REFERS TO BEHAVIORAL PROCESSES, LIKE
10 GAMBLING, SEXUAL ACTIVITY, EATING.
11 AND SO PEOPLE DEVELOP PROBLEMS SUCH AS GAMBLING
12 ADDICTION, AND MIGHT GO TO GAMBLERS ANONYMOUS FOR
13 TREATMENT. SEXUAL ADDICTION, THEY MIGHT GO TO SEX ADDICTS
14 ANONYMOUS FOR ANXIETY DISORDERS.
15 THESE ARE A BODY OF NONDRUG ADDICTIONS WHICH
16 EFFECTIVELY DEMONSTRATE ALL THE SAME CRITERIA THAT SUBSTANCE
17 DEPENDENCE DEMONSTRATES, BUT THERE'S NO DRUG INVOLVED.
18 Q. LET ME ASK YOU, PEOPLE WHO DEVELOP THESE PROCESS
19 ADDICTIONS, SUCH AS GAMBLING, SEXUAL ACTIVITY AND
20 OVEREATING, DO THOSE BEHAVIORS MEET THE CRITERIA IN THE 1988
21 SURGEON GENERAL'S REPORT FOR ADDICTION?
22 A. YES, THEY DO.
23 Q. DOES THE FACT THAT THESE BEHAVIORS DO NOT INVOLVE
24 THE TAKING OF A SUBSTANCE OR A DRUG PREVENT THEM FROM BEING
25 CLASSIFIED AS ADDICTIONS?
26 A. NOW, YOU'RE GETTING TO CUTTING-EDGE THINKING IN
27 ADDICTION TREATMENT. AND NO, IT DOESN'T.
28 Q. CAN YOU COMPARE FOR THE JURY THE MANNER IN WHICH
5012
1 THESE TYPE OF PROCESS ADDICTIONS ARE TREATED TO THE MANNER
2 IN WHICH PEOPLE WHO ARE DIAGNOSED AS NICOTINE-DEPENDENT ARE
3 TREATED.
4 A. WELL, THE PROCESS BY WHICH PEOPLE GET INTO
5 TREATMENT FOR THESE BEHAVIORAL ADDICTIONS AND THE TREATMENT
6 ITSELF VERY MUCH MIRRORS THE TYPE OF TREATMENT THAT'S DONE
7 FOR THE HARD DRUGS, LIKE HEROIN, COCAINE, AMPHETAMINES.
8 PEOPLE GENERALLY HAVE BEEN DESTROYING THEIR LIVES
9 BECAUSE OF THEIR BEHAVIORAL PROBLEMS, BANKRUPTING
10 THEMSELVES, LOSING THEIR SPOUSES, LOSING THEIR JOBS, HAVING
11 LEGAL PROBLEMS.
12 AND THEY NEED AN ENTIRE PSYCHOLOGICAL AND
13 SPIRITUAL REHABILITATION, AND GENERALLY HAVE TO GO INTO A
14 STRUCTURAL TREATMENT PROGRAM, UNLIKE THE VAST MAJORITY OF
15 CIGARETTE SMOKERS, WHO KICK THE HABIT ON THEIR OWN.
16 Q. DR. BECKSON, I THINK I ASKED YOU THIS: YOU DO
17 TREAT PEOPLE WITH PROCESS ADDICTIONS, DON'T YOU?
18 A. YES, I DO.
19 Q. YOU HAVE TREATED IN THE PAST PEOPLE FOR NICOTINE
20 DEPENDENCE PROBLEMS, HAVEN'T YOU?
21 A. YES, I HAVE.
22 Q. CAN YOU COMPARE FOR THE JURY THE DIFFICULTY
23 PEOPLE HAVE IN STOPPING SMOKING TO THE DIFFICULTY PATIENTS
24 HAVE IN BREAKING THESE PROCESS ADDICTIONS.
25 A. WELL, THE INTENSITY OF THE CRAVINGS AND URGES AND
26 THE LENGTHS TO WHICH PEOPLE ARE WILLING TO GO TO GAMBLE OR
27 ENGAGE IN SEXUAL ACTIVITY WHEN THEY'RE A SEX ADDICT ARE FAR
28 MORE ADDICTIVE AND LEAD TO FAR GREATER CONSEQUENCES, SUCH
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1 THAT THEY'RE MUCH MORE POWERFUL PROCESSES TO TRY TO RESIST.
2 AND THE ISSUES WITH PUTTING DOWN A CIGARETTE AND
3 NOT PICKING ONE UP ARE ALMOST IN A DIFFERENT BALLPARK THAN
4 THESE PROCESS ADDICTIONS.
5 Q. DR. BECKSON, DO YOU USE THE TERM "ADDICTION" IN
6 YOUR MEDICAL PRACTICE?
7 A. YES, I DO.
8 Q. AT THE RISK OF COMPLETE AND TOTAL CONFUSION, LET
9 ME ASK: DO YOU HAVE A WORKING DEFINITION OF "ADDICTION"
10 THAT YOU USE IN YOUR PRACTICE?
11 A. I HAVE A SHORTHAND DEFINITION THAT WORKS FOR ME,
12 AND IT'S CONSISTENT WITH THE DSM-IV DEFINITION, WHICH IS
13 THAT ANYTHING IS AN ADDICTION IF YOU REPETITIVELY DO IT AND

14 IT LEADS TO NEGATIVE CONSEQUENCES, SUCH AS RUINING YOUR
15 LIFE, AND YOU KNOW THAT WHAT YOU'RE DOING IS RUINING YOUR
16 LIFE AND YET YOU STILL DO IT.

17 AND THAT'S THE ESSENTIAL CORE ELEMENT OF
18 ADDICTION.

19 Q. DR. BECKSON, USING THE DEFINITION YOU USE IN YOUR
20 MEDICAL PRACTICE OF "ADDICTION," ARE SOME SMOKERS ADDICTED
21 TO NICOTINE?

22 A. YES.

23 Q. USING YOUR DEFINITION, ARE ALL SMOKERS OF A PACK
24 A DAY OF CIGARETTES ADDICTED TO NICOTINE?

25 A. NO, NOT ALL OF THEM.

26 Q. WHY NOT?

27 A. BECAUSE, FIRST OF ALL, NOT EVERYONE WHO SMOKES A
28 PACK A DAY IS EXPERIENCING PROBLEMS RESULTING FROM THEIR
5014 BEHAVIOR THAT THEY'RE AWARE OF ARE CONNECTED TO THEIR
2 SMOKING BEHAVIOR. AND YET, THEY'RE SMOKING, NONETHELESS.

3 SO THERE ARE ALL SORTS OF PEOPLE WHO SMOKE A PACK
4 A DAY. THE THING THEY HAVE IN COMMON IS THAT THEY SMOKE 20
5 CIGARETTES A DAY.

6 BUT IF YOU ARE GOING TO LOOK AT INDIVIDUALS AND
7 YOU ARE GOING TO TRY TO ASSESS: IS THIS INDIVIDUAL
8 ADDICTED, AND YOU ARE GOING TO USE SOME DEFINITION THAT'S
9 SOMEWHAT STANDARDIZED, THEN YOU ARE GOING TO GET SOME PEOPLE
10 WHO ARE AND SOME PEOPLE ARE AREN'T.

11 Q. LET'S TURN, DR. BECKSON, AND I WANT TO FOCUS A
12 LITTLE MORE ON SMOKING AND SMOKING BEHAVIOR. AND I WANT TO
13 ASK YOU ABOUT SMOKERS THAT DO MEET YOUR DEFINITION
14 OF ADDICTION AND ASK YOU WHETHER THE FACT THAT SOME SMOKERS
15 ARE ADDICTED PREVENTS THEM FROM STOPPING SMOKING
16 CIGARETTES?

17 A. WELL, NOT ONLY DOES SMOKING CIGARETTES AND HAVING
18 AN ADDICTION TO NICOTINE NOT STOP THEM. THERE'S NOTHING
19 DIFFERENT IN TERMS OF BEING ABLE TO STOP ADDICTION, PERIOD.

20 Q. WHAT FACTORS ARE MOST IMPORTANT IN DETERMINING
21 WHETHER OR NOT AN ADDICTED SMOKER WILL BE ABLE TO STOP
22 SMOKING CIGARETTES?

23 A. LIKE ANY ADDICTION, THE MOST IMPORTANT ELEMENT IS
24 WHETHER THE PERSON WANTS TO STOP. NO MATTER WHAT YOU DO, AS
25 A FRIEND, FAMILY MEMBER, PHYSICIAN AND SO FORTH, IF THE
26 PERSON DOESN'T WANT TO STOP, YOUR EFFORTS WILL FAIL.

27 SO YOU HAVE TO START OUT AT A PLACE WHERE THE
28 PERSON WANTS TO STOP. THEY'VE MADE A DECISION TO STOP.
5015 THEY ARE MOTIVATED TO STOP. THEY'RE WILLING TO DO WHAT IT
2 TAKES TO STAY STOPPED, AND THEY'RE GOING TO PERSIST IN THEIR
3 EFFORTS TO REMAIN STOPPED.

4 ALL OTHER THINGS BEING EQUAL, IT RISES AND FALLS
5 ON THAT ISSUE.

6 Q. YOU USED A COUPLE TERMS THAT I'D LIKE TO MAKE
7 SURE WE KNOW WHAT YOU MEANT BY.

8 WHEN YOU SAID THE PERSON HAS TO BE MOTIVATED TO
9 STOP, WHAT DID YOU MEAN?

10 A. WELL, THE WORD "MOTIVATION" REFERS TO HOW BADLY
11 YOU WANT SOMETHING.

12 Q. YOU ALSO SAID -- I SHOULD SAY, YOU MENTIONED IN
13 THAT NEXT TO LAST ANSWER THE IMPORTANCE OF PERSISTENCY IN
14 ATTEMPTING TO QUIT; IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. WHAT IS THE IMPORTANCE OF PERSISTENCY IN
17 ATTEMPTING TO QUIT?

18 A. WELL, LIKE MOST THINGS IN LIFE, YOU OFTEN DON'T

19 GET IT THE FIRST TIME. AND IF YOU GIVE UP RIGHT OFF THE
20 BAT, YOU'RE NEVER GOING TO LEARN TO DO IT, SO YOU HAVE TO
21 STICK WITH IT.
22 WITH ADDICTIONS, WHERE YOU'RE HAVING SOMEONE WHO
23 WANTS TO CHANGE HIGHLY REPETITIVE BEHAVIOR THAT THEY'VE DONE
24 THOUSANDS AND THOUSANDS OF TIMES, AND CHANGE WHAT THEY DO ON
25 ANY GIVEN DAY, THEY'RE NOT GOING TO GET IT RIGHT THE FIRST
26 TIME. THEY'RE GOING TO HAVE TO LEARN THROUGH A PROCESS.
27 AND IF THEY'RE NOT WILLING TO STICK THROUGH THAT
28 PROCESS, IT'S NOT GOING TO HAPPEN.

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1 Q. DOES THE LIKELIHOOD THAT AN ADDICTED SMOKER WILL
2 BE ABLE TO STOP SMOKING INCREASE WITH ADDITIONAL SUBSEQUENT
3 AND PERSISTENT EFFORTS TO STOP SMOKING?

4 A. THAT'S BEEN WELL DEMONSTRATED.

5 Q. DR. BECKSON, WHEN YOU'RE DEALING WITH PATIENTS
6 THAT COME TO YOU WITH SUBSTANCE ABUSE PROBLEMS, I IMAGINE
7 THAT, ON A FREQUENT BASIS, YOU'RE TOLD BY YOUR PATIENTS THAT
8 THEY'D LIKE TO STOP WHATEVER SUBSTANCE THEY'RE USING;
9 CORRECT?

10 A. YES. THEY'VE DETERMINED THAT THEY WANT TO STOP
11 AND THEY WANT ASSISTANCE WITH THEIR EFFORT.

12 Q. HOW DO YOU AS A PSYCHIATRIST EVALUATE THE
13 SINCERITY OF AN INDIVIDUAL'S DESIRE TO STOP USING A
14 SUBSTANCE WHEN THEY COME TO YOU AND TELL YOU THAT THEY WANT
15 TO STOP?

16 A. ONE THING I LEARNED EARLY ON IS THAT ADDICTS
17 FREQUENTLY WILL MAKE THE STATEMENT THAT THEY WANT TO STOP.
18 IN OTHER WORDS, THE WORDS WILL BE FORMED, AND THEY'LL COME
19 OUT OF THE ADDICT'S MOUTH, BUT YOU REALLY HAVE TO EVALUATE
20 THAT BEHAVIORALLY BY LOOKING AT THEIR BEHAVIOR, WHAT THEIR
21 ACTIONS ARE.

22 THAT'S THE ONLY WAY TO TRULY, ACCURATELY ASSESS
23 WHETHER THEY'RE MOTIVATED. THAT'S REALLY WHAT THEY ARE
24 WILLING TO DO, HOW MUCH THEY'RE WILLING TO PAY IN TERMS OF
25 THE COST TO THEIR AVERAGE DAY, WHAT LENGTHS THEY'RE WILLING
26 TO GO TO, HOW MUCH EFFORT THEY PUT INTO IT.

27 SO YOU LOOK AT THE PERSON'S BEHAVIOR TO DETERMINE
28 WHETHER THOSE WORDS TRULY REFLECTED A MOTIVATED INTERSTATE

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1 OR WHETHER THAT PERSON WAS SIMPLY MAKING AN IDLE COMMENT OR
2 SAYING SOMETHING TO PLEASE YOU.

3 IT'S BEHAVIOR ANALYSIS, BECAUSE TALK IS CHEAP,
4 ESPECIALLY IN ADDICTION.

5 Q. LET ME BE MORE SPECIFIC THEN.

6 IF A CIGARETTE SMOKER CAME TO YOU AND TOLD YOU
7 THAT THEY WOULD LIKE TO STOP SMOKING CIGARETTES, WHAT TYPE
8 OF SPECIFIC BEHAVIORS WOULD YOU LOOK FOR TO EVALUATE THE
9 SINCERITY OF THAT EXPRESSION?

10 A. WELL, I'D START OFF WITH ASKING THE PERSON WHY
11 THEY WANT TO QUIT. I'D ASK THEM TO TALK TO ME ABOUT THEIR
12 SMOKING BEHAVIOR, AND THEN START TO EXPLAIN TO THEM THAT
13 THEY'RE GOING TO NEED TO DO CERTAIN THINGS THAT MIGHT
14 INVOLVE BEING WILLING TO UTILIZE MEDICATION, HE NICOTINE
15 PATCH, ZYBAN, THAT TYPE OF THING. IT MIGHT INCLUDE NEEDING
16 TO GO TO COUNSELING MEETINGS, TO MAKE TELEPHONE CALLS TO
17 KEEP ME INFORMED OF THEIR PROGRESS.

18 SO IF THE PERSON IS NOT -- IF THE PERSON STARTS
19 RIGHT OFF THE BAT HAVING RESISTANCE TO DOING THOSE
20 SUGGESTIONS, THEN YOU HAVE TO BEGIN TO QUESTION THE PERSON'S
21 MOTIVATION.

22 Q. DR. BECKSON, AS A PSYCHIATRIST, ARE YOU FAMILIAR
23 WITH THE TERM "COGNITIVE FUNCTIONING"?

24 A. YES, I AM.
25 Q. THE JURY HEARD ABOUT THIS.
26 WOULD YOU REFRESH US AS TO WHAT "COGNITIVE"
27 MEANS.
28 A. WELL, THE SIMPLEST WAY TO DEFINE "COGNITIVE" IN A
5018 WAY THAT WE ALL UNDERSTAND IS, IT'S YOUR THINKING ABILITY.
1 IT'S YOUR ABILITY TO THINK, YOUR ABILITY TO UNDERSTAND WHAT
2 YOU READ OR WHAT IS SAID TO YOU, YOUR ABILITY TO REASON, GO
3 THROUGH A PROCESS OF THINKING ABOUT IT, YOUR ABILITY TO MAKE
4 DECISIONS, YOUR ABILITY TO EVALUATE YOUR DECISIONS.
5 THAT'S ALL COGNITIVE ABILITY. IT HAS TO DO WITH
6 THE THINKING PART OF THE BRAIN.
7 Q. AS A PSYCHIATRIST, DO YOU SOMETIMES GET INVOLVED
8 WITH ASSESSING YOUR PATIENT'S COGNITIVE OR THINKING
9 ABILITIES?
10 A. ALMOST ALL THE TIME.
11 Q. DR. BECKSON, DO YOU HAVE AN OPINION AS TO WHETHER
12 OR NOT NICOTINE AFFECTS A PERSON'S COGNITIVE ABILITIES?
13 A. WELL, NICOTINE FOR SOME PEOPLE ENHANCES THEIR
14 ATTENTION AND CONCENTRATION. IT DOESN'T DO ANYTHING
15 DESTRUCTIVE OR IMPAIRING IN TERMS OF ONE'S THINKING ABILITY.
16 Q. DOES NICOTINE IMPAIR THE ABILITY OF A SMOKER TO
17 RECEIVE AND UNDERSTAND INFORMATION ABOUT SMOKING AND HEALTH?
18 A. NO, IT DOES NOT.
19 Q. WOULD NICOTINE INTERFERE WITH A SMOKER'S ABILITY
20 TO UNDERSTAND WARNINGS OR RECOMMENDATIONS THAT THEY RECEIVE
21 FROM THEIR PHYSICIAN ABOUT SMOKING AND HEALTH?
22 A. NO, IT WOULD NOT.
23 Q. WOULD THE SAME BE TRUE FOR INFORMATION THAT A
24 SMOKER RECEIVED FROM THEIR FRIENDS OR FAMILY MEMBERS?
25 A. NO. IT WOULD NOT IMPAIR THEIR ABILITY TO
26 UNDERSTAND AND USE THEIR COGNITIVE ABILITY.
27 Q. DOES NICOTINE IMPAIR THE ABILITY OF A SMOKER TO
5019 READ AND UNDERSTAND THE WARNINGS THAT APPEAR ON THE SIDE OF
1 CIGARETTE PACKS?
2 A. NO, IT DOES NOT.
3 Q. DOES NICOTINE AFFECT THE MANNER IN WHICH SMOKERS
4 INTERPRET THE WARNINGS THAT APPEAR ON THE SIDE OF CIGARETTE
5 PACKS?
6 MS. CHABER: WELL, I WOULD OBJECT, YOUR HONOR.
7 I THINK THIS IS BEYOND THE SCOPE OF EXPERTISE, 801(A). AND
8 I THINK WE'RE DELVING INTO THE JURY'S PROCESS.
9 THE COURT: OVERRULED.
10 MR. FURR: Q. YOU CAN ANSWER, DOCTOR.
11 A. COULD YOU REPEAT THE QUESTION, PLEASE.
12 MR. FURR: I WILL ASK THE COURT REPORTER TO READ
13 IT BACK FOR US.
14 THE COURT: BEFORE YOU READ IT BACK, LET ME JUST
15 ASK FOR A CLARIFICATION.
16 ARE YOU TALKING ABOUT WHETHER IT AFFECTS THE
17 ABILITY OF SOMEBODY IN THAT AREA?
18 MR. FURR: YES, YOUR HONOR.
19 THE COURT: ALL RIGHT. WHY DON'T YOU REPHRASE
20 THE QUESTION TO BE MORE SPECIFIC IN THAT DIRECTION.
21 THE QUESTION IS A LITTLE BIT AMBIGUOUS, THE WAY
22 IT'S PHRASED.
23 MR. FURR: Q. DR. BECKSON, DO YOU HAVE AN
24 OPINION AS TO WHETHER OR NOT NICOTINE AFFECTS THE ABILITY OF
25 A SMOKER TO INTERPRET THE WARNINGS ON THE SIDE OF A
26 CIGARETTE PACK?
27 A. YES, I DO HAVE AN OPINION.
28

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1 Q. WHAT IS THAT OPINION?

2 A. IT DOES NOT AFFECT THE PERSON'S ABILITY TO
3 INTERPRET WORDS OR WARNINGS THAT MIGHT BE FOUND ON A PACK OF
4 CIGARETTES.

5 Q. DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
6 NICOTINE AFFECTS THE ABILITY OF A SMOKER TO UNDERSTAND THE
7 HEALTH RISKS THAT THEY TAKE BY SMOKING?

8 A. NO, IT DOES NOT.

9 THE COURT: WHEN YOU GET TO A LOGICAL POINT, LET
10 US KNOW.

11 MR. FURR: I'M ALMOST THERE, YOUR HONOR.

12 Q. DR. BECKSON, AS A FORENSIC PSYCHIATRIST,
13 DOES THE PHRASE "FREE WILL" HAVE SPECIAL MEANING TO YOU?

14 A. WELL, "FREE WILL" IS A CONCEPT THAT COMES INTO
15 THE BEHAVIOR OF PATIENTS AND PEOPLE WHO COME UNDER
16 EVALUATION BY FORENSIC PSYCHIATRISTS.

17 Q. AND WHAT DOES "FREE WILL" MEAN TO YOU, AS A
18 FORENSIC PSYCHIATRIST?

19 A. "FREE WILL" ESSENTIALLY MEANS THAT THE PERSON IS
20 FREE TO MAKE DECISIONS ABOUT WHAT THEY'RE GOING TO DO.
21 ESSENTIALLY, IT HAS TO DO WITH THE VOLUNTARINESS OF
22 BEHAVIOR.

23 Q. DR. BECKSON, DO YOU HAVE AN OPINION AS TO WHETHER
24 OR NOT NICOTINE IMPAIRS THE ABILITY OF SMOKERS TO EXERCISE
25 THEIR FREE WILL WITH RESPECT TO WHETHER OR NOT TO CONTINUE
26 SMOKING?

27 A. NO. LIKE WITH ALL THE ADDICTIONS, FREE WILL IS
28 NOT IMPAIRED BY NICOTINE ADDICTION OR ANY OTHER ADDICTION.

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1 THE DRUG DOESN'T CONTROL THE PERSON. THE PERSON CONTROLS
2 THEIR OWN BEHAVIOR.

3 MR. FURR: THIS IS A GOOD PLACE, YOUR HONOR.

4 THE COURT: OKAY. JURORS, PLEASE CONTINUE TO
5 FOLLOW THE ADMONITION.

6 LET'S TAKE A 20-MINUTE RECESS UNTIL 11:15.

7 (RECESS TAKEN FROM 10:55 TO 11:20 A.M.)

8 THE COURT: WE ARE BACK ON THE RECORD.

9 MR. FURR.

10 MR. FURR: THANK YOU, YOUR HONOR.

11 Q. DR. BECKSON, I'D LIKE TO TURN TO A NEW TOPIC,
12 WHICH I'D LIKE TO ASK YOU ABOUT NOW, WHICH IS HOW NICOTINE
13 AFFECTS THE BRAIN.

14 THAT WILL BE AN AREA RELATED TO YOUR BACKGROUND
15 IN NEUROPSYCHOLOGY OR NEUROBEHAVIOR, WOULDN'T IT?

16 A. YES, IT WOULD.

17 Q. DR. BECKSON, DOES NICOTINE AFFECT THE BRAIN?

18 A. NICOTINE DOES HAVE EFFECTS ON THE BRAIN, BASED ON
19 WHAT WE UNDERSTAND AT THIS POINT.

20 Q. IS NICOTINE UNIQUE IN ITS ABILITY TO AFFECT THE
21 BRAIN?

22 A. NO. NOT ONLY IS NICOTINE NOT UNIQUE IN ITS
23 ABILITY TO AFFECT THE BRAIN. DRUGS ARE NOT UNIQUE IN THEIR
24 ABILITY TO AFFECT THE BRAIN.

25 IN FACT, ALL THE EXPERIENCES WE HAVE ON A
26 DAY-TO-DAY BASIS AFFECT THE BRAIN, AND WHEN THOSE
27 EXPERIENCES ARE VERY MEMORABLE, THEY TEND TO AFFECT THE
28 BRAIN MORE SO.

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1 Q. LET ME ASK YOU TO GIVE US SOME EXAMPLES OF
2 SUBSTANCES AND ACTIVITIES THAT AFFECT THE BRAIN.

3 A. WELL, WHAT WE LOOK AT IN TERMS OF BRAIN EFFECTS
4 IN HUMANS IS PRETTY PICTURES THAT LIGHT UP IN DIFFERENT

5 PARTS OF THE BRAIN.

6 WHEN PEOPLE DO THINGS, LIKE SIGN THEIR NAME ON A
7 PIECE OF PAPER. WE'RE JUST LEARNING, YOU KNOW, WHAT SORT OF
8 THINGS CORRELATE WITH DIFFERENT ACTIVITIES.

9 BUT THE BRAIN WILL CHANGE IN RESPONSE TO DRUGS,
10 IN RESPONSE TO WRITING YOUR OWN SIGNATURE, IN RESPONSE TO
11 DOING ALL SORTS OF PUZZLES, IN RESPONSE TO PLAYING VIDEO
12 GAMES, GAMBLING, SEXUAL ACTIVITY. ALL OF THESE THINGS
13 CHANGE THE BRAIN.

14 Q. DR. BECKSON, I WANT TO ASK YOU TO EXPLAIN TO US
15 IN A BRIEF FORM WHAT'S KNOWN TODAY ON HOW NICOTINE AFFECTS
16 THE BRAIN.

17 IN PARTICULAR, I'D LIKE YOU TO EXPLAIN WHAT'S
18 KNOWN ABOUT HOW NICOTINE AFFECTS OR INTERACTS WITH CERTAIN
19 RECEPTORS IN THE BRAIN.

20 A. OKAY. YOU HAVE TO UNDERSTAND THAT A LOT OF WHAT
21 WE KNOW ABOUT HOW NICOTINE WORKS IS BASED ON ANIMAL MODELS,
22 INCLUDING A CERTAIN TYPE OF FISH THAT HAS LOTS OF A
23 ACETYLCHOLINE RECEPTORS. THESE ARE NOT ALL PIECES OF
24 INFORMATION DRAWN FROM ACTUAL HUMAN BEINGS, BUT WE ARE DOING
25 AN ANALOGY BETWEEN OTHER SPECIES.

26 WHAT WE KNOW IS THAT, IN THE BRAIN, THERE ARE
27 BRAIN CELLS -- NEURONS, THEY'RE CALLED -- AND THEY'RE
28 ARRANGED IN CIRCUITS LIKE -- LIKE ELECTRICAL WIRING. THOSE

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1 CIRCUITS ARE ARRANGED IN DIFFERENT PARTS OF THE BRAIN TO
2 SERVE DIFFERENT FUNCTIONS. THERE MAY BE FUNCTIONS ABOUT
3 SEEING, HEARING, SMELLING. ALL OF THIS INVOLVES VARIOUS
4 PARTS OF THE BRAIN.

5 THE BRAIN USES ELECTRICITY TO COMMUNICATE
6 INFORMATION ABOUT WHERE THE TWO BRAIN CELLS CONNECT.
7 THEY'RE NOT WIRED TOGETHER. SO THERE'S A LITTLE SPACE
8 BETWEEN THEM. AND IT USES A CHEMICAL MESSENGER TO SEND THAT
9 INFORMATION FROM ONE CELL TO THE OTHER. THOSE CHEMICAL
10 MESSENGERS ARE SOMETIMES CALLED NEUROTRANSMITTERS.
11 ACETYLCHOLINE IS A CHEMICAL MESSENGER. ACETYLCHOLINE IS ONE
12 OF MOST COMMON CHEMICAL MESSENGERS IN THE BRAIN.

13 NICOTINE, WHICH IS FOUND IN TOBACCO, BINDS TO ONE
14 SUBSET OF ACETYLCHOLINE RECEPTOR. A RECEPTOR IS THE POINT
15 WHERE THE CHEMICAL ATTACHES TO THE CELL.

16 SO ONE CELL THAT'S -- ONE CELL LETS OUT THE
17 CHEMICAL, IT TRAVELS A SHORT DISTANCE, THEN IT ATTACHES TO
18 THE NEXT CELL. AND THAT'S HOW THE BRAIN COMMUNICATES
19 INFORMATION.

20 SO ACETYLCHOLINE IS A COMMON CHEMICAL MESSENGER,
21 AND THESE ARE ACETYLCHOLINE RECEPTORS. ONE SUBSET OF THOSE
22 ACETYLCHOLINE RECEPTORS IS A RECEPTOR THAT NICOTINE TURNS
23 OUT TO BIND TO.

24 Q. OKAY. SO NICOTINE DOES BIND TO CERTAIN TYPES OF
25 ACETYLCHOLINE RECEPTORS IN THE BRAIN?

26 A. YES, IT DOES.

27 Q. ARE YOU FAMILIAR WITH THE ISSUE OF WHETHER
28 NICOTINE CAUSES AN UNREGULATION OF ACETYLCHOLINE RECEPTORS

5024
1 IN THE BRAIN?

2 A. YES.

3 Q. DOES NICOTINE CAUSE UNREGULATION OF ACETYLCHOLINE
4 RECEPTORS?

5 LET ME BACK UP AND ASK YOU TO REMIND US: WHAT
6 DOES IT MEAN FOR ACETYLCHOLINE TO BE UNREGULATED?

7 A. THAT'S A GOOD QUESTION. WHAT "UNREGULATION"
8 REFERS TO IS HOW THE BRAIN MAINTAINS BALANCE. THE BRAIN IS
9 CONSTANTLY BOMBARDED BY ALL SORTS OF EXPERIENCES AND

10 PROCESSES, AND MOTHER NATURE LOVES BALANCE. SO ALL NATURAL
11 SYSTEMS TEND TOWARD KEEPING THINGS IN BALANCE, THE BRAIN
12 INCLUDED.

13 IN ORDER TO KEEP THAT BALANCE, THE BRAIN IS
14 CONSTANTLY READJUSTING HOW MANY RECEPTORS OF THIS TYPE AND
15 HOW MANY RECEPTORS OF THAT TYPE, HOW MUCH CHEMICAL SHOULD BE
16 RELEASED OF THIS TYPE OF CHEMICAL MESSENGER, HOW MUCH OF THE
17 OTHER ONE.

18 AND WHEN YOU TALK ABOUT REGULATION OF RECEPTORS,
19 YOU EITHER HAVE MORE OR YOU HAVE LESS. "UNREGULATION"
20 REFERS TO HAVING MORE.

21 Q. DR. BECKSON, WHAT IS KNOWN ABOUT THE FUNCTION OF
22 THESE ADDITIONAL ACETYLCHOLINE RECEPTORS THAT ARE FOUND IN
23 THE BRAINS OF SMOKERS COMPARED TO NONSMOKERS?

24 A. WELL, APPARENTLY, THE REASON WHY THE
25 ACETYLCHOLINE RECEPTORS GET UNREGULATED IN SMOKERS IS THAT
26 THE ACETYLCHOLINE RECEPTORS BECOME DESENSITIZED, AND THEY
27 STOP WORKING AS WELL.

28 SO THE BRAIN SEEMS TO MAKE UP FOR THAT BY

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1 PRODUCING NEW ONES. SO YOUR TOTAL NUMBER IS GOING UP,
2 ALTHOUGH MOST OF THOSE ARE NOT FUNCTIONING.

3 Q. IS NICOTINE UNIQUE IN ITS ABILITY TO CAUSE
4 UNREGULATION OF BRAIN RECEPTORS?

5 A. NOT AT ALL. AS I MENTIONED, DRUGS SUCH AS
6 CAFFEINE CAUSE UNREGULATION OF ITS OWN RECEPTOR. ALL SORTS
7 OF EXPERIENCES THAT A PERSON MAY BE EXPOSED TO IN A DRAMATIC
8 OR A CONSISTENT WAY WILL CAUSE RECEPTOR CHANGES THAT COULD
9 INCLUDE UNREGULATION.

10 Q. DR. BECKSON, I WANT YOU TO ASSUME THERE HAS BEEN
11 TESTIMONY IN THIS CASE THAT NICOTINE FROM SMOKING CHANGES
12 THE STRUCTURE OF THE BRAIN. OKAY?

13 A. OKAY.

14 Q. DO YOU HAVE AN OPINION WHETHER THE NICOTINE
15 CHANGES THE STRUCTURE OF THE BRAIN?

16 A. YES, I DO.

17 Q. WHAT IS THAT OPINION?

18 A. MY OPINION IS THAT IT IS A HIGHLY MISLEADING AND
19 INCORRECT USE OF THE WORD "STRUCTURAL." "STRUCTURAL," LIKE
20 STRUCTURAL ENGINEERING, REFERS TO BIG THINGS THAT YOU CAN
21 SEE.

22 IN BEHAVIORAL NEUROLOGY, A STRUCTURAL CHANGE IS A
23 CHANGE IN THE BRAIN THAT YOU CAN SEE, YOU CAN SEE ON A CAT
24 SCAN, OR YOU COULD SEE IF YOU LOOKED INSIDE THE HEAD WITH
25 YOUR NAKED EYE.

26 SO THESE ARE GROSS CHANGES, LIKE STROKES, BULLET
27 WOUNDS, HEAD INJURIES. THAT'S THE SORT OF GROSS CHANGE THAT
28 PEOPLE REFER TO AS "STRUCTURAL CHANGE."

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1 Q. OKAY. LET'S GET PAST THE INTERACTION OF NICOTINE
2 WITH ACETYLCHOLINE RECEPTORS. I WANT TO ASK YOU ABOUT THE
3 ROLE THAT NICOTINE PLAYS IN CAUSING THE RELEASE OF DOPAMINE
4 IN THE BRAIN.

5 ARE YOU FAMILIAR WITH HOW NICOTINE BRINGS ABOUT
6 THE RELEASE OF DOPAMINE?

7 A. I KNOW THAT NICOTINE DOES CAUSE RELEASE OF
8 DOPAMINE, AND I DON'T BELIEVE ANYONE KNOWS EXACTLY HOW IT
9 DOES THAT.

10 Q. LET ME BACK UP. I WANT TO ASK YOU ABOUT
11 SOMETHING THE JURY HAS HEARD ABOUT. THAT'S THE RELEASE OF
12 DOPAMINE FROM WHAT WAS DESCRIBED AS THE PLEASURE CENTER IN
13 THE BRAIN.

14 COULD YOU EXPLAIN TO THE JURY WHERE THAT CENTER

15 IS LOCATED IN THE BRAIN. AND WOULD USING THE EXHIBIT YOU
16 BROUGHT WITH YOU BE OF ASSISTANCE?
17 A. YES, IT WOULD.
18 MR. FURR: YOUR HONOR, IF THERE IS NO OBJECTION,
19 I'D LIKE THE DOCTOR TO STEP DOWN AND USE THAT EXHIBIT TO
20 RESPOND TO THE QUESTION.
21 THE COURT: I TAKE IT FROM WHAT YOU SAID BEFORE,
22 THERE IS NO OBJECTION, SO IT'S OKAY.
23 MS. CHABER: THERE IS NO OBJECTION.
24 MR. FURR: WE'RE GOING TO MARK THE BRAIN AS
25 6292.
26 (ITEM MORE PARTICULARLY
27 LISTED IN THE INDEX MARKED
28 FOR IDENTIFICATION DEFENDANTS'
5027
1 EXHIBIT # 6292)
2 THE COURT: ONCE YOU MARK IT, THE COURT GETS THE
3 KEEP IT.
4 MR. FURR: MY KIDS ARE GOING TO BE MAD AT ME,
5 BUT YOU CAN KEEP IT, I GUESS.
6 THE WITNESS: THIS IS ESSENTIALLY A LIFESIZE
7 REPLICA OF THE HUMAN BRAIN WITH THE WAY IT SITS IN THE HEAD.
8 SO WE ALL HAVE THIS (INDICATING) INSIDE OUR SKULL
9 PROTECTED BY THIS HARD OUTER SKULL.
10 NOW, IF YOU -- IF YOU LOOK AT THE BRAIN, YOU
11 CAN'T SEE WHERE THE PLEASURE CENTER IS BECAUSE THE PLEASURE
12 CENTER IS BURIED DEEP IN THE BRAIN.
13 WHAT'S MOST NOTICEABLE ABOUT THE BRAIN IS THAT
14 MOST OF IT IS THIS CONVOLUTED SURFACE ON THE TOP. THIS IS
15 CALLED THE CEREBRAL CORTEX. THIS IS MOST HIGHLY DEVELOPED
16 IN HUMAN BEINGS. IN FACT, AS YOU GO BACKWARDS IN EVOLUTION,
17 OR YOU GO TO LOWER SPECIES, YOU GET LESS AND LESS OF THIS.
18 WHAT MAKES US HUMAN IS THAT NOT ONLY DO WE HAVE
19 ALL OF THIS. THIS PART, THE FRONT PART IS HUGE. YOU JUST
20 DON'T SEE THIS IN OTHER ANIMALS. AND THIS IS THE PART WHERE
21 WE THINK; WE KNOW WE'RE PEOPLE, THAT WE HAVE NAMES, THAT WE
22 CAN ANALYZE SITUATIONS, WE CAN MAKE DECISIONS, WE CAN CHANGE
23 OUR DECISIONS, DEPENDING ON THE RESULTS, WE HAVE RELIGION,
24 WE HAVE PHILOSOPHY.
25 MS. CHABER: YOUR HONOR, I THINK WE ARE STARTING
26 TO EXPAND BEYOND WHAT I THOUGHT THE QUESTION WAS, WHICH WAS
27 WHERE THE PLEASURE CENTER WAS.
28 MR. FURR: YOUR HONOR, THE BRAIN IS A
5028
1 COMPLICATED THING.
2 MS. CHABER: I EXERCISED MINE AND I OBJECTED.
3 OBJECTION, YOUR HONOR. I THINK WE SHOULD PROCEED BY
4 QUESTION AND ANSWER.
5 THE COURT: WHY DON'T WE DO THAT.
6 MR. FURR: OKAY.
7 THE COURT: WHY DON'T WE PROCEED BY QUESTION AND
8 ANSWER.
9 Q. DR. BECKSON, MS. CHABER JUST MADE AN OBJECTION.
10 WHAT PART OF HER BRAIN WAS SHE USING TO MAKE THAT
11 OBJECTION?
12 MS. CHABER: I WOULD OBJECT THAT THAT ASSUMES
13 FACTS NOT IN EVIDENCE, AND LACKS FOUNDATION.
14 MR. FURR: Q. LET ME ASK YOU THIS: WHAT PART
15 OF THE BRAIN DO WE THINK WITH?
16 A. WE THINK WITH THIS PART OF THE BRAIN
17 (INDICATING), USING INFORMATION THAT'S PERCEIVED IN THIS
18 PART OF THE BRAIN.
19 YOUR IQ IS BASED ON ALL OF THIS PUT TOGETHER.

20 THIS IS WHAT PEOPLE -- WHEN PEOPLE GET AN IQ TEST, IT'S
21 TESTING ALL OF THESE CONVOLUTIONS HERE.

22 BUT THIS IS THE PILOT HERE. THIS IS THE PART
23 THAT MAKES THE DECISIONS ABOUT WHAT TO DO.

24 Q. WE GOT INTO THIS, BECAUSE I ASKED YOU TO USE THE
25 MODEL TO SHOW US WHERE THE PLEASURE CENTER IS IN THE BRAIN
26 THAT DOPAMINE IS RELATED TO.

27 A. YES, WE DID.

28 Q. CAN YOU DO THAT?

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1 A. YES, I CAN. FIRST, WE'LL HAVE TO SLICE THE BRAIN
2 IN HALF. SO HERE WE GO.

3 NOW, WHAT THIS DOES IS IT REVEALS THE UNDERLYING
4 STRUCTURES WHERE WE CAN FIND THE PLEASURE CENTER. SO IN
5 THIS OLD PART OF THE BRAIN, IT'S DEEP RIGHT IN HERE
6 (INDICATING). AND THIS IS WHERE THE SO-CALLED PLEASURE
7 CENTER IS.

8 Q. OKAY. HOW DOES THE ORGANIZATION OF THE BRAIN
9 RELATE TO THE ADDICTIVE PROPERTIES OF DRUGS IN HUMANS?

10 A. IT'S ACTUALLY FAIRLY COMPLEX. IF YOU LOOK AT
11 RATS OR LOWER SPECIES, LIKE REPTILES OR BIRDS, IT GETS
12 SIMPLER AND SIMPLER AND SIMPLER.

13 SO LET ME TAKE OFF THIS FRONTAL LOBE, AND I CAN
14 DEMONSTRATE. SO AS I SAID, THIS IS THE CORTEX. THIS IS
15 HIGHLY DEVELOPED IN MAN.

16 AND THIS IS THE OLD BRAIN. WHAT YOU'RE LOOKING
17 AT HERE IS ESSENTIALLY THE BRAIN OF A BIRD, FOR ALL INTENTS
18 AND PURPOSES. THAT'S ALL A BIRD'S GOT.

19 NOW, A BIRD IS BORN WITH CERTAIN INSTINCTS, JUST
20 LIKE WE ARE, AND A BIRD ALSO NEEDS TO KNOW HOW TO NEGOTIATE
21 ITS ENVIRONMENT.

22 SO IT USES ITS BRAIN TO FIGURE OUT WHERE THE FOOD
23 IS, HOW TO MATE, HOW TO TAKE CARE OF ITS YOUNG UNDER
24 CHANGING CIRCUMSTANCES.

25 AND THE SO-CALLED PLEASURE CENTER HELPS TEACH
26 WHAT'S GOOD VERSUS WHAT'S NOT GOOD. AND SO THE PLEASURE
27 CENTER ESSENTIALLY DIRECTS THE BEHAVIOR OF THE BIRD ALMOST
28 TOTALLY.

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1 NOW, AS HUMAN BEINGS, WE HAVE THIS HUGE CORTEX
2 HERE THAT OVERLIES THIS BEHAVIOR. WHAT IT SETS UP IN TERMS
3 OF ORGANIZATION IS ESSENTIALLY WE HAVE THE OLD BRAIN, WHICH
4 IS USING THIS PLEASURE PATHWAY, WHICH IS ESSENTIALLY A WAY
5 TO LEARN WHAT'S GOOD, HOW TO APPROACH THINGS THAT ARE GOOD,
6 WHAT TO DO IN ORDER TO GET THINGS THAT ARE GOOD, AND SO THIS
7 IS HELPING WITH THE LEARNING PROCESS.

8 AND THEN, ULTIMATELY, IT FEEDS INFORMATION UP
9 INTO THE THINKING PART OF THE BRAIN, THIS PREFRONTAL CORTEX
10 HERE. AND THIS PREFRONTAL CORTEX MAKES A DECISION WHAT TO
11 DO. IT MAY CHOOSE BETWEEN ALTERNATIVES.

12 AND IT WILL CHOOSE BETWEEN ALTERNATIVES USING ALL
13 THE HELP OF THIS PART OF THE CORTEX AND WHAT'S COMING FROM
14 DOWN BELOW IN THE OLD PART OF THE BRAIN TO ULTIMATELY MAKE A
15 DECISION THAT, "TO ME, I WANT TO DO THIS BECAUSE I BELIEVE
16 THAT, FOR ME, I'LL GET MORE GAIN OUT OF THIS, DOING THIS
17 THAN DOING THAT. THEREFORE, I WILL DO THIS."

18 AND THEN, THE PERSON WILL DO IT. NOW, THE PERSON
19 HAS FREE WILL --

20 MS. CHABER: OBJECTION.

21 THE WITNESS: -- IN THIS PART OF THE BRIAN.

22 MS. CHABER: MOVE TO STRIKE. I THINK WE'RE WELL
23 BEYOND THE QUESTION.

24 MR. FURR: YOUR HONOR, I ASKED HIM TO DESCRIBE

25 HOW THE ORGANIZATION OF THE BRAIN RELATES TO ADDICTIVE
26 BEHAVIOR. I THINK THAT'S WHAT HE'S DOING.
27 THE COURT: IT'S A BROAD QUESTION. I'M NOT
28 GOING TO STRIKE WHAT HE SAID.

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1 WHY DON'T YOU JUST FINISH THIS THOUGHT. LET'S GO
2 TO THE NEXT QUESTION.
3 MR. FURR: OKAY.
4 THE COURT: GO AHEAD, DOCTOR. THE REASON I'M
5 DOING THIS, JUST SO YOU UNDERSTAND, WE HAVE TO PROCEED BY
6 QUESTION AND ANSWER. WE CAN'T PROCEED IN A LECTURE FORMAT
7 IN THE COURT.
8 THE WITNESS: I UNDERSTAND.
9 THE COURT: WHEN YOU ANSWER, YOU SHOULD GIVE
10 FULL AND COMPLETE ANSWERS, BUT IF THEY GET TOO LONG, THEN
11 THEY START TO BE MORE LIKE A LECTURE, LESS LIKE QUESTION AND
12 ANSWER.
13 THE WITNESS: I UNDERSTAND.
14 THE COURT: BUT YOU GO AHEAD AND FINISH THIS.
15 THE WITNESS: SO ESSENTIALLY, THE TAKE-HOME
16 MESSAGE -- TO FINISH UP -- WE, AS HUMANS, BECAUSE OF THE
17 ORGANIZATION OF OUR BRAIN, HAVE VERY PRIMITIVE FUNCTIONS
18 DEEP IN THIS OLD PART OF THE BRAIN, AND THAT'S OVERLAID BY
19 HOW WE DO COMPLICATED FUNCTIONS AND HOW WE DO SPECIFICALLY
20 HUMAN FUNCTIONS, INCLUDING MAKING DECISIONS ABOUT OUR OWN
21 BEHAVIOR. AND THAT TAKES PLACE HERE.
22 MR. FURR: Q. LET ME MAKE SURE WE UNDERSTAND,
23 DOCTOR. THIS OLD PART OF THE BRAIN IS THE AREA OF THE BRAIN
24 THAT YOU DESCRIBED AS THE PLEASURE OR THE REWARD CENTER,
25 WHERE DOPAMINE ACTS WHEN PEOPLE INGEST DRUGS OR OTHER
26 SUBSTANCES; IS THAT CORRECT?
27 A. THAT'S CORRECT.
28 Q. AND WHERE IN THE BRAIN -- WHAT PART OF THE BRAIN

5032
1 IS THE PART OF THE BRAIN THAT HAS THE ULTIMATE
2 DECISION-MAKING ABILITY WITH RESPECT TO HOW WE BEHAVE?
3 A. THIS IS THE ULTIMATE DECISION-MAKER
4 (INDICATING). THIS IS ESSENTIALLY THE EQUIVALENT OF THE
5 PILOT OF THE AIRPLANE. HE'S GOT ALL THIS OTHER STUFF. HE
6 DECIDES WHERE TO SET THE COURSE, HOW HIGH TO FLY, AND SO
7 FORTH.
8 Q. WHEN WE INGEST DRUGS THAT RESULT IN THE RELEASE
9 OF DOPAMINE AND THE STIMULATION OF THE PLEASURE CENTER, DOES
10 THAT PHENOMENA OVERRIDE THE DECISION-MAKING ABILITY OF THE
11 FRONT PART OF THE BRAIN?
12 A. IN GENERAL, NO. THE ONLY TIMES THAT YOU CAN
13 KNOCK OUT THIS PART OF THE BRAIN IS IF YOU GET SOMEONE
14 ACUTELY INTOXICATED WITH SOMETHING LIKE ALCOHOL OR COCAINE
15 THAT'S GOING TO DIRECTLY ACT ON THIS PART OF THE BRAIN AND
16 INTERFERE WITH THIS PART OF THE BRAIN'S ABILITY TO THINK.
17 IN GENERAL, OUTSIDE OF ACUTE INTOXICATION,
18 ADDICTIVE DRUGS WORK DOWN HERE.
19 Q. YOU BEGAN ANSWERING WHAT I WANTED TO ASK YOU
20 NEXT, AND THAT IS: CAN YOU EXPLAIN TO THE JURY THE
21 DIFFERENCES IN HOW NICOTINE AFFECTS THE BRAIN VERSUS HOW
22 HARD DRUGS SUCH AS HEROIN OR ALCOHOL AFFECT THE BRAIN.
23 A. WELL, THAT'S A COMPLEX QUESTION, BUT TO SIMPLIFY
24 IT, NICOTINE DOES NOT IMPAIR THIS PART OF THE BRAIN.
25 IN FACT, SOME PEOPLE REPORT, AND IT'S PRETTY
26 WELL-RECOGNIZED, THAT NICOTINE CAN ENHANCE THIS PART OF THE
27 BRAIN IN TERMS OF BEING AWAKE, ALERT AND ATTENTIVE.
28 HARD DRUGS, SUCH AS ALCOHOL, WHICH IS TOXIC TO

5033

1 THE ENTIRE BRAIN, INTERFERE WITH THE FUNCTIONING OF THIS
2 PART OF THE BRAIN.

3 AND THE ACUTE INTOXICATION OF HEROIN, FOR
4 EXAMPLE, INTERFERES WITH THIS PART OF THE BRAIN. AND THEN,
5 THEY ALSO HAVE DIFFERENCES IN OTHER PARTS OF THE BRAIN
6 RELATING TO WITHDRAWAL.

7 Q. OKAY. THANKS. YOU CAN TAKE THE STAND.

8 DR. BECKSON, I WANT TO MOVE FROM THE DIFFERENT
9 WAYS IN WHICH NICOTINE AND HARD DRUGS AFFECT THE BRAIN TO
10 THE WAY IN WHICH NICOTINE AND HARD DRUGS AFFECT BEHAVIOR.

11 ARE THERE DIFFERENCES BETWEEN THE WAY NICOTINE
12 DEPENDENCE AFFECTS BEHAVIOR VERSUS THE WAY HARD DRUG
13 ADDICTION AFFECTS BEHAVIOR?

14 A. YES, THERE ARE.

15 Q. CAN YOU EXPLAIN THOSE DIFFERENCES TO US.

16 A. WELL, THE MOST STRIKING DIFFERENCE, ASIDE FROM
17 INTOXICATION, IS THAT ADDICTION TO HARD DRUGS, SUCH AS
18 HEROIN, COCAINE AND ALCOHOL, LEAD TO A BEHAVIORAL DISORDER
19 IN WHICH THE PERSON IS GROSSLY IMPAIRED, ULTIMATELY IN THEIR
20 ABILITY TO TAKE CARE OF THINGS AT HOME, IN THE WORKPLACE AND
21 IN THEIR COMMUNITY.

22 AND THAT IS PERHAPS THE MOST STRIKING DIFFERENCE
23 BETWEEN NICOTINE, WHERE EVEN THE MOST HIGHLY ADDICTIVE USER
24 IS ABLE TO TAKE CARE OF ALL THEIR RESPONSIBILITIES AT HOME,
25 AT THE WORKPLACE AND THE COMMUNITY. THEY DON'T GO BANKRUPT
26 IN THE QUEST TO CONTINUE THEIR HABIT. THEY DON'T LOSE THEIR
27 FAMILY, MARRIAGES OR THEIR JOBS.

28 THAT'S PROBABLY THE MOST DRAMATIC DIFFERENCE
5034

1 OTHER THAN INTOXICATION.

2 Q. OKAY. LET'S MOVE PAST BEHAVIOR AND TALK ABOUT
3 TREATMENT.

4 ARE THERE DIFFERENCES IN THE TYPE OF TREATMENT
5 THAT NICOTINE-DEPENDENT PATIENTS REQUIRE VERSUS PATIENTS
6 THAT ARE ADDICTED TO HARD DRUGS?

7 A. YES, THERE ARE DIFFERENCES.

8 Q. CAN YOU DESCRIBE THE MAJOR DIFFERENCES FOR US.

9 A. WELL, THE FIRST MAJOR DIFFERENCE IS THAT THE VAST
10 MAJORITY OF PEOPLE WHO QUIT SMOKING GET NO FORMAL TREATMENT
11 INTERVENTION AT ALL. WE ARE TALKING ABOUT 90-PLUS PERCENT
12 OF ALL PEOPLE WHO HAVE QUIT CIGARETTES HAVE NOT HAD ANY
13 FORMAL, PROFESSIONAL INTERVENTION.

14 ON THE OTHER HAND, IT'S VERY, VERY UNUSUAL FOR AN
15 ADDICTED PERSON WITH ALCOHOLISM, HEROIN ADDICTION OR COCAINE
16 ADDICTION TO SIMPLY PUT DOWN THEIR DRUGS AND WALK AWAY
17 SUCCESSFULLY. IN GENERAL, THEY'RE GOING TO REQUIRE
18 SIGNIFICANT INTERVENTION THAT MAY INCLUDE SELF-HELP GROUPS,
19 SUCH AS THE 12-STEP PROGRAMS LIKE ALCOHOLICS ANONYMOUS, OR
20 EVEN PROFESSIONAL INTERVENTION BY PSYCHIATRISTS AND MENTAL
21 HEALTH PROFESSIONALS.

22 Q. OKAY. I WANT TO ASK YOU ABOUT THE SYMPTOMS THAT
23 PEOPLE EXPERIENCE WHEN THEY STOP USING CERTAIN SUBSTANCES.

24 SOME SMOKERS EXPERIENCE WITHDRAWAL SYMPTOMS WHEN
25 THEY STOP SMOKING, DON'T THEY?

26 A. THAT'S CORRECT.

27 Q. CAN YOU COMPARE THE TYPES OF WITHDRAWAL SYMPTOMS
28 THAT SMOKERS EXPERIENCE WHEN THEY STOP SMOKING TO THE TYPES
5035

1 OF SYMPTOMS THAT PEOPLE ADDICTED TO HEROIN OR BARBITURATES
2 OR COCAINE OR ALCOHOL EXPERIENCE?

3 MS. CHABER: I WOULD OBJECT, YOUR HONOR. THAT'S
4 AWFULLY VAGUE. COMPOUND.

5 THE COURT: IF IT'S TOO VAGUE, THEN WE'LL LET

6 THE DOCTOR TELL US THAT.
7 I'M GOING TO ALLOW THE QUESTION.
8 THE WITNESS: I UNDERSTAND THE QUESTION.
9 THE COURT: I'M GOING TO OVERRULE THE OBJECTION.
10 MS. CHABER: I ALSO SAID COMPOUND -- I DON'T
11 KNOW IF YOU HEARD IT -- COMPARING IT TO ABOUT FIVE OR SIX
12 DIFFERENT ONES.
13 THE COURT: WELL, I DON'T KNOW. ALL RIGHT.
14 THEY MAY BE TAKEN IN A GROUP. I JUST DON'T KNOW.
15 GO AHEAD.
16 MR. FURR: IN THE INTEREST OF TIME, I'LL BREAK
17 THEM OUT.
18 THE COURT: BREAK THEM OUT.
19 MR. FURR: Q. DR. BECKSON, CAN YOU COMPARE THE
20 TYPE OF WITHDRAWAL SYMPTOMS THAT SMOKERS EXPERIENCE WHEN
21 THEY QUIT SMOKING TO THE TYPES OF SYMPTOMS THAT ALCOHOLICS
22 EXPERIENCE WHEN THEY STOP DRINKING?
23 A. WELL, TO BEGIN WITH, IF YOU LOOK AT CIGARETTE
24 SMOKERS WHO PUT DOWN THEIR CIGARETTES IN AN ATTEMPT TO QUIT,
25 THERE IS, FOR EXAMPLE, IN THE DSM-IV A SYNDROME CALLED
26 NICOTINE WITHDRAWAL. NOW, ONLY ABOUT 50 PERCENT -- ONLY
27 ABOUT HALF OF PEOPLE WHO QUIT SMOKING QUALIFY AS HAVING
28 NICOTINE WITHDRAWAL.

5036

1 THE 50 PERCENT OR THE HALF THAT DO TEND TO HAVE
2 AN ASSORTMENT OF SYMPTOMS THAT MAY INCLUDE ANXIETY, INSOMNIA
3 OR TROUBLE SLEEPING, APPETITE INCREASE OR WEIGHT GAIN.
4 THEIR HEART RATE MAY BE A LITTLE SLOWER THAN IT NORMALLY
5 IS. THOSE SORT OF INCONVENIENCES.
6 Q. OKAY. I DIDN'T -- I'M NOT SURE YOU CAUGHT -- DID
7 YOU EXPLAIN THE TYPE OF SYMPTOMS THAT ALCOHOLICS EXPERIENCE?
8 A. THANK YOU. ALCOHOLICS, WHEN THEY STOP DRINKING,
9 CAN DIE FROM THEIR WITHDRAWAL. IT IS A MEDICAL EMERGENCY
10 WHEN AN ALCOHOLIC WHO GOES THROUGH SEVERE WITHDRAWAL STARTS
11 DEVELOPING THE TYPES OF PROBLEMS THAT CAN BE SEEN, INCLUDING
12 SEIZURES, HALLUCINATIONS, DT'S AND ULTIMATELY DEATH.
13 AND A VAST MAJORITY OF ALCOHOL-DEPENDENT PATIENTS
14 WILL EXPERIENCE ALCOHOL WITHDRAWAL WHEN THEY STOP DRINKING
15 SUDDENLY.
16 Q. WITHOUT REPEATING THE SYMPTOMS THAT SMOKERS
17 EXPERIENCE, CAN YOU COMPARE THEM TO THE TYPE OF SYMPTOMS
18 THAT PEOPLE EXPERIENCE WHEN THEY STOP USING HEROIN?
19 A. WHEN PEOPLE STOP USING HEROIN, WHILE THEY DO NOT
20 EXPERIENCE THE POSSIBILITY OF DEATH -- HEROIN WITHDRAWAL IS
21 NOT POTENTIALLY FATAL, SO IT'S DIFFERENT FROM ALCOHOL -- BUT
22 THEY HAVE A SEVERE WITHDRAWAL, INVOLVING SEVERE AGITATION,
23 INCLUDED VOMITING, DIARRHEA, A REALLY GUT-WRENCHING,
24 HORRIFIC FEELING THAT HEROIN ADDICTS ARE DESPERATE TO DO
25 ANYTHING TO AVOID.
26 AND SO OFTEN, THEY'LL DO THINGS, INCLUDING BREAK
27 THE LAW, TO GET THEIR NEXT FIX.
28 Q. LET ME JUST ASK ONE OR TWO MORE.

5037

1 CAN YOU EXPLAIN TO THE JURY THE TYPE OF SYMPTOMS
2 THAT PEOPLE EXPERIENCE WHEN THEY STOP USING BARBITURATES?
3 A. BARBITURATE WITHDRAWAL IS VERY MUCH LIKE
4 ALCOHOL. AGAIN, IT'S POTENTIALLY A FATAL WITHDRAWAL.
5 PEOPLE DIE FROM TAKING BARBITURATE SLEEPING PILLS, AND THEN
6 STOPPING.
7 THAT USED TO BE SEEN A LOT IN THE '50S WHEN
8 BARBITURATES WERE USED COMMONLY AS SLEEPING PILLS. AND WHEN
9 PEOPLE WOULD RUN OUT AND STOP TAKING IT SUDDENLY, THEY'D GO
10 OFF AND WIND UP IN THE HOSPITAL.

11 Q. LET ME GO BACK TO THE SYMPTOMS THAT SMOKERS
12 EXPERIENCE.
13 CAN YOU EXPLAIN TO THE JURY HOW LONG THOSE
14 SYMPTOMS THAT YOU IDENTIFIED LAST WHEN A NICOTINE-DEPENDENT
15 SMOKER STOPS SMOKING?
16 A. WELL, FIRST OF ALL, YOU ARE TALKING ABOUT ONLY
17 THE HALF OF PEOPLE WHO EXPERIENCE THE WITHDRAWAL SYNDROME.
18 AND AMONG THOSE, YOU'RE TALKING ABOUT DAYS TO WEEKS.
19 GENERALLY, BY TWO WEEKS, THEY'VE GOTTEN THROUGH
20 THAT WITHDRAWAL SYNDROME.
21 Q. IS THERE A SYMPTOM OF NICOTINE WITHDRAWAL KNOWN
22 AS DYSPHORIA?
23 A. DYSPHORIA IS ONE OF THE SYMPTOMS IN THE
24 WITHDRAWAL SYNDROME, WHICH ESSENTIALLY MEANS -- "DYSPHORIA"
25 IS A COMMON WORD USE IN PSYCHIATRY, WHICH MEANS YOU DON'T
26 FEEL GOOD. AND THAT OFTEN IS THE WORD APPLIED TO SOMEONE
27 WHO IS ANXIOUS OR SAD.
28 SO THE PERSON IN THOSE TWO WEEKS POTENTIALLY MAY
5038
1 BE FEELING BAD, NOT FEELING AS GOOD AS THEY NORMALLY DO.
2 THAT'S DIFFERENT -- DYSPHORIA IS DIFFERENT FROM THE SEVERE
3 FORM OF CLINICAL DEPRESSION. IT JUST MEANS YOU ARE NOT
4 FEELING GOOD. IT'S AN ADJECTIVE.
5 Q. THAT'S WHAT I WANTED TO ASK YOU ABOUT NEXT.
6 IF YOU COULD CONTRAST FOR US WHAT IT MEANS TO BE
7 DYSPHORIC VERSUS WHAT IT MEANS TO BE CLINICALLY DEPRESSED.
8 A. THERE'S A HUGE DIFFERENCE.
9 FIRST OF ALL, CLINICAL DEPRESSION IS A DIAGNOSIS
10 OF A DISORDER WHERE THE PERSON IS SO DEPRESSED THAT THEY MAY
11 BE SUICIDAL. THEY CAN'T FUNCTION. THEY CAN'T TAKE CARE OF
12 WHAT THEY NEED TO TAKE CARE AT HOME. THEY CAN'T GO TO
13 WORK. SOMETIMES THEY CAN GET OUT OF BED. THEY CAN'T EAT.
14 THEY CAN'T SLEEP. THEY'RE HIGHLY AGITATED. IF IT GETS BAD
15 ENOUGH, THEY HAVE TO BE HOSPITALIZED.
16 GENERALLY, THAT TYPE OF DEPRESSION IS GOING TO
17 LEAD TO THE USE OF ANTIDEPRESSANT MEDICATION, AND POSSIBLY
18 PSYCHOTHERAPY OR SOME COMBINATION OF BOTH.
19 DYSPHORIA IS AN ADJECTIVE. YOU DON'T FEEL SO
20 BAD. PEOPLE CAN BE DYSPHORIC IN THEIR EVERYDAY LIFE. YOU
21 HAVE TO TALK WITH YOUR BOSS. IT DOESN'T GO WELL. YOU'RE
22 DYSPHORIC. YOU FIND OUT THAT THE TRAVEL AGENT MESSED UP
23 YOUR VACATION FLIGHT PLANS. YOU'RE DYSPHORIC. THAT'S WHAT
24 "DYSPHORIC" MEANS.
25 Q. IS THERE A RELATIONSHIP BETWEEN THE SYMPTOMS THAT
26 SMOKERS EXPERIENCE WHEN THEY TRY TO STOP SMOKING AND THE
27 LIKELIHOOD THAT THEY WILL BE SUCCESSFUL IN STOPPING SMOKING?
28 A. ACTUALLY, WHILE YOU MIGHT THINK THAT THERE WOULD
5039
1 BE, THERE IS NOT A CORRELATION BETWEEN WHETHER YOU
2 EXPERIENCE WITHDRAWAL WHEN YOU STOP SMOKING, WHICH IS THE
3 50-50 CHANCE TO HAVE THE WITHDRAWAL SYNDROME THAT'S
4 DESCRIBED, AND WHETHER YOU'RE ACTUALLY GOING TO BE SMOKING
5 OR NOT A YEAR LATER.
6 IT DOESN'T WORK OUT THAT WAY.
7 Q. DR. BECKSON, THE JURY HAS HEARD TESTIMONY THAT
8 RELAPSE RATES FOR SMOKERS WHO TRY TO QUIT SMOKING ARE
9 SIMILAR TO THE RELAPSE RATES FOR PEOPLE WHO TRY TO QUIT
10 USING HARD DRUGS AND ALCOHOL.
11 COULD YOU FIRST EXPLAIN TO US WHAT RELAPSE RATES
12 ARE.
13 A. WELL, AGAIN, YOU HAVE TO KNOW WHAT YOU ARE
14 TALKING ABOUT OR WHAT SOMEONE ELSE IS TALKING ABOUT TO
15 UNDERSTAND WHAT THEY'RE TRYING TO CONVEY.

16 A RELAPSE, IN GENERAL, MEANS THAT YOU'VE STOPPED
17 USING THE DRUG SUCCESSFULLY, AND THEN YOU GO BACK TO USING
18 THE DRUG.

19 NOW, IN ADDICTION WORK, "RELAPSE" MEANS THAT YOU
20 STOPPED USING THE DRUG SUCCESSFULLY, AND IN THE DSM-IV, THAT
21 MEANS YOU HAVEN'T USED YOUR DRUG OF CHOICE FOR AT LEAST A
22 MONTH.

23 IF YOU USE THE NEXT DAY AFTER YOU STOP, THE NEXT
24 WEEK, THAT IS NOT A RELAPSE, BECAUSE YOU NEVER STOPPED. SO
25 FIRST OF ALL, YOU HAVE TO QUIT FOR A MONTH, AND THEN AFTER
26 THAT, A RELAPSE MEANS YOU GO BACK TO USING.

27 THIS COMES UP ALL THE TIME IN TREATMENT. YOU
28 HAVE SOMEONE WHO STOPPED. THEY HAVEN'T USED IN SIX MONTHS.

5040

1 IN A MOMENT OF CONFUSION, WEAKNESS, WHATEVER, THE PERSON
2 GOES OUT AND USES ONCE, AND THEY CALL YOU UP ON THE PHONE.

3 THAT'S NOT A RELAPSE. THAT'S A SLIP. THAT'S
4 CONSIDERED A SLIP. THE PERSON THEN GETS BACK IN THE SADDLE
5 AND CONTINUES ON WITH THEIR RECOVERY PROGRAM.

6 A RELAPSE IS RESERVED FOR YOU GO BACK TO USING AS
7 YOU WERE DOING BEFORE YOU EVER STOPPED USING, SO YOU'RE BACK
8 TO USING EVERY DAY OR EVERY WEEK, HOWEVER YOU WERE USING.

9 THAT'S A RELAPSE.

10 NOW, IN THE TOBACCO RESEARCH LITERATURE, THEY
11 DEFINE EVERYTHING TOTALLY DIFFERENT. SO YOU HAVE TO LOOK AT
12 THESE DEFINITIONS.

13 Q. THAT'S WHAT I WANT TO ASK YOU ABOUT, DR. BECKSON.
14 ARE RELAPSE RATES FOR SMOKING DEFINED THE SAME
15 WAY IN THE SCIENTIFIC LITERATURE AS RELAPSE RATES ARE FOR
16 HARD DRUGS AND ALCOHOL?

17 A. NOT AT ALL.

18 Q. WOULD YOU EXPLAIN HOW RELAPSE RATES FOR SMOKING
19 ARE DEFINED WITH SMOKING?

20 A. WITH SMOKING, RATHER THAN HAVING TO BE CLEAN FOR
21 A MONTH, YOU HAVE TO BE CLEAN FROM CIGARETTES FOR 24 HOURS.
22 IF YOU'RE CLEAN FOR 24 HOURS, YOU QUIT.

23 THEN, IF YOU SMOKE ONE CIGARETTE, EVEN IF YOU
24 SMOKE ONLY ONE CIGARETTE IN THE NEXT YEAR, YOU RELAPSED.
25 AND SO IT'S LOOKING AT THE PHENOMENON IN A TOTALLY DIFFERENT
26 LIGHT.

27 SO WHEN YOU GET THESE NUMBERS -- YOU KNOW, WE ALL
28 KNOW ABOUT POLLS AND STATISTICS -- YOU'VE GOT TO LOOK AT THE

5041

1 NUMBERS FOR WHAT THEY MEAN.

2 Q. DR. BECKSON, IS IT FAIR TO SAY THAT COMPARING
3 RELAPSE RATE FOR SMOKERS TO RELAPSE RATES FOR HARD DRUGS AND
4 ALCOHOL IS AN APPLES-AND-ORANGES TYPE COMPARISON?

5 A. BECAUSE OF THESE DIFFERENCES IN DEFINITION, IT
6 REALLY MAKES IT CONFUSING TO FIGURE OUT WHAT'S WHAT.

7 Q. DOES THE FACT THAT SIMILAR RELAPSE RATES ARE
8 SOMETIMES REPORTED FOR SMOKING AS FOR HARD DRUGS AND ALCOHOL
9 DEMONSTRATE THAT SMOKING IS AS ADDICTIVE AS HARD DRUGS AND
10 ALCOHOL?

11 A. I THINK THAT'S A PREPOSTEROUS CONCLUSION.

12 FIRST OF ALL, NOT ONLY ARE THE RELAPSE RATES HARD
13 TO UNDERSTAND BECAUSE OF THESE DIFFERENCES, BUT THERE'S NO
14 DOUBT THAT AMPHETAMINES AND COCAINE ARE MORE THAN -- MORE
15 POWERFUL AND MUCH MORE ADDICTIVE DRUGS THAN CIGARETTES, AND
16 CREATE ADDICTION SYNDROMES THAT ARE FAR MORE DESTRUCTIVE IN
17 TERMS OF DESTROYING ONE'S LIFE.

18 AND THAT THEY ARE INCREDIBLY DIFFICULT TO PUT
19 DOWN FOR ANY PERIOD OF TIME. AND THE RISK OF RELAPSE IS
20 HIGH, ONGOING FOR YEARS, WHICH IS WHY PEOPLE GO TO A.A. FOR

21 THE REST OF THEIR LIFE.

22 Q. DR. BECKSON, BASED UPON YOUR EXPERIENCE IN
23 TREATING HUNDREDS OF ADDICTS, AS YOU EXPLAINED TO US, YOUR
24 EDUCATION AND TRAINING, DO YOU HAVE AN OPINION AS TO WHETHER
25 HEROIN AND COCAINE ADDICTS FIND IT EASIER TO STOP USING
26 THOSE SUBSTANCES THAN SMOKERS FIND IT DIFFICULT TO STOP
27 SMOKING?

28 A. WELL, AGAIN, THAT'S A VERY CONFUSING TYPE OF

5042

1 STATEMENT.

2 THE ISSUE IS THAT, IN GENERAL, THE HEROIN AND
3 COCAINE ADDICT IS DESPERATELY TRYING TO STAY CLEAN, IS
4 FOCUSED ON STAYING CLEAN FROM THIS TERRIBLY DESTRUCTIVE
5 DRUG. FREQUENTLY, THEY MAY BE SMOKERS IN ADDITION TO THAT.
6 BUT THEIR FOCUS AT THAT POINT IS NOT ON WHETHER THEY SHOULD
7 STOP SMOKING BECAUSE THEY MIGHT HAVE SOME SORT OF
8 HEALTH-RELATED CONSEQUENCE IN 20 YEARS, BECAUSE THEY MAY BE
9 DEAD FROM THEIR OTHER DRUG IN 20 MINUTES.

10 AND THEN THEY GO TO 12-STEP MEETINGS, AND
11 EVERYONE IS SMOKING IN THE 12-STEP MEETINGS. SO IT'S REALLY
12 HARD TO JUST IN THE MIDST OF THAT PUT DOWN YOUR CIGARETTES
13 UNDER THOSE CIRCUMSTANCES.

14 AND SO I WOULDN'T SAY THAT MAKES CIGARETTES MORE
15 ADDICTIVE OR HARDER TO QUIT THAN HEROIN OR COCAINE.

16 Q. LET ME GO BACK TO THIS PROCESS ADDICTION FOR A
17 MINUTE.

18 ARE YOU FAMILIAR WITH THE RELAPSE RATES FOR
19 OVEREATING; FOR EXAMPLE, THE FREQUENCY WITH WHICH PEOPLE WHO
20 HAVE MEDICAL OR PSYCHIATRIC PROBLEMS RELATED TO OVEREATING
21 RELAPSE?

22 A. THE RELAPSE RATE FOR BINGE EATING DISORDER AND
23 BULIMIA ARE HUGE, HUGE RELAPSE RATES, VERY DIFFICULT TO
24 TREAT DISORDERS.

25 EVEN IF YOU TAKE SIMPLE EVERYDAY DIETING, THE
26 RELAPSE RATES ARE ENORMOUS, PARTICULARLY RIGHT AFTER THE
27 FIRST OF THE YEAR.

28 THE COURT: LET US KNOW WHEN YOU GET TO A GOOD

5043

1 SPOT FOR LUNCH.

2 MR. FURR: THIS IS FINE.

3 THE COURT: THIS IS A GOOD SPOT?

4 MR. FURR: SURE.

5 THE COURT: JURORS, OVER THE NOON HOUR, PLEASE
6 CONTINUE TO FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT
7 1:30.

8 (LUNCH RECESS TAKEN AT 11:55 A.M.)

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1 AFTERNOON SESSION 1:35 P.M.
2 THURSDAY, MARCH 2, 2000
3 THE COURT: WE ARE BACK ON RECORD.
4 I THINK WE ARE READY TO PROCEED.
5 MR. FURR: THANK YOU, YOUR HONOR.
6

7 DIRECT EXAMINATION (CONTINUED)

8 BY MR. FURR: Q. GOOD AFTERNOON, DR. BECKSON.
9 A. GOOD AFTERNOON.
10 Q. I WANT TO -- NEW TOPIC. I WANT TO ASK YOU SOME
11 QUESTIONS ABOUT THE PLAINTIFF IN THE CASE, MRS. LESLIE
12 WHITELEY.

13 A. OKAY.

14 Q. DR. BECKSON, DID I ASK YOU TO FORM AN OPINION AS
15 TO WHETHER OR NOT MRS. WHITELEY WAS ADDICTED TO CIGARETTES
16 AND UNABLE TO QUIT SMOKING?

17 A. YOU'RE ASKING ME TO FORM AN OPINION?

18 Q. DID I ASK YOU TO DO SO, SIR?

19 A. DID YOU?

20 Q. YES.

21 A. EARLIER TODAY?

22 Q. NO. ACTUALLY, IT WAS FEW MONTHS AGO NOW.

23 A. YES, YOU DID.

24 Q. SIR, A FEW MONTHS AGO, DID I ALSO REQUEST YOU TO
25 EVALUATE THE MEDICAL INFORMATION TO DETERMINE WHETHER OR NOT
26 YOU HAD AN OPINION AS TO WHETHER MRS. WHITELEY WAS COMPETENT
27 TO UNDERSTAND INFORMATION REGARDING THE HEALTH RISK OF
28 CIGARETTE SMOKING?

5045

1 A. YES, YOU DID.

2 Q. BEFORE I ASK YOU ABOUT THOSE OPINIONS, I WANT TO
3 TALK WITH YOU ABOUT THE INFORMATION THAT YOU REVIEWED, SIR.
4 DID YOU REVIEW MRS. WHITELEY'S DEPOSITION?

5 A. YES, I DID.

6 Q. DID REVIEW BOTH THE VIDEOTAPE PORTIONS AND THE
7 TRANSCRIBED PORTIONS?

8 A. YES, YOU DID.

9 Q. WHAT ELSE DID YOU REVIEW TO PREPARE TO EXPRESS AN
10 OPINION REGARDING MRS. WHITELEY?

11 A. I REVIEWED HER MEDICAL RECORD. I REVIEWED A
12 NUMBER OF DEPOSITIONS, INCLUDING DEPOSITIONS OF HER FAMILY
13 DOCTOR, HER OBSTETRICIAN, AND VARIETY OF FAMILY MEMBERS,
14 INCLUDING HER FATHER, HER BROTHER, ONE OF HER SISTERS, AN
15 EX-HUSBAND, DEAN MOORE, THE CURRENT HUSBAND, LEONARD.

16 I THINK THAT'S ABOUT IT.

17 Q. WHEN YOU SAY YOU REVIEWED HER FAMILY DOCTOR'S
18 DEPOSITION, IS THAT DR. JUNG?

19 A. THAT WAS DR. JUNG.

20 Q. DID YOU ALSO REVIEW DR. RICHARDSON'S DEPOSITION?

21 A. YES. DR. RICHARDSON'S DEPOSITION WAS REVIEWED.
22 HE WAS HER OBSTETRICIAN.

23 Q. AND IN PREPARATION FOR YOUR TESTIMONY TODAY, DID
24 YOU CONDUCT VARIOUS LITERATURE SEARCHES AND REVIEW AGAIN --
25 AND REVIEW NEW INFORMATION REGARDING NICOTINE, SMOKING
26 BEHAVIOR AND ADDICTION?

27 A. YES. I REVIEWED TO REFRESH MY MEMORY, AS WELL AS
28 OBTAINED UP-TO-DATE INFORMATION AND PAPERS ON THE SUBJECT.

5046

1 Q. I WANT TO GO BACK NOW AND TALK TO YOU ABOUT

2 DSM-IV. YOU TOLD THE JURY EARLIER TODAY WHAT DSM-IV IS.
3 DR. BECKSON, DO YOU HAVE EXPERIENCE IN USING
4 DSM-IV IN MAKING DIAGNOSES OF DRUG DEPENDENCE?
5 A. YES, I DO.
6 Q. IN FACT, DR. BECKSON, DO YOU TRAIN OTHER DOCTORS,
7 SPECIFICALLY PSYCHIATRIST RESIDENTS, ON HOW TO USE THE
8 DSM-IV DIAGNOSTIC SCHEME?
9 A. YES. IN FACT, IN MY ROLE AS A CLINICAL FACULTY
10 MEMBER AT UCLA SCHOOL OF MEDICINE, I TRAIN PHYSICIANS
11 LEARNING TO BE PSYCHIATRISTS AND IN RESIDENCY TRAINING.
12 LEARNING THE DSM-IV IS A SIGNIFICANT PART OF THE
13 CURRICULUM, AND I AM ONE OF THE TEACHERS OF THAT CURRICULUM.
14 Q. BEFORE I ASK YOU FOR YOUR OPINION, WOULD YOU
15 REMIND THE JURY AS TO HOW THE DSM-IV DIAGNOSTIC SCHEME IS
16 USED TO MAKE DIAGNOSES OF DRUG DEPENDENCE.
17 A. EVERY DIAGNOSIS HAS A SET OF CRITERIA IN THE
18 DSM-IV. IT'S ALMOST LIKE A MENU, THE WAY IT'S SET UP.
19 IN THE DRUG OR SUBSTANCE DEPENDENCE DISORDERS,
20 THERE IS A SINGLE SET OF CRITERIA THAT WAS FORMULATED TO
21 APPLY TO ANY DRUG OF DEPENDENCE, AND THOSE CRITERIA ARE SET
22 UP SUCH THAT A TRAINEE OR ANYONE -- BECAUSE THE DSM-IV IS
23 USED BY MORE THAN JUST PSYCHIATRISTS. ANYONE CAN GO THROUGH
24 THIS LIST OF CRITERIA TO MAKE THE DIAGNOSIS ACCORDING TO
25 THOSE CRITERIA.
26 Q. DR. BECKSON, LET ME ASK YOU TO LOOK AT THE THIRD
27 PAGE OF WHAT WAS PREVIOUSLY MARKED AS DEFENDANTS' EXHIBIT
28 5837 FOR IDENTIFICATION, AND ASK YOU WHETHER THIS PAGE LISTS
5047
1 THE DSM-IV CRITERIA FOR MAKING SUBSTANCE DEPENDENCE
2 DIAGNOSES?
3 A. YES, IT DOES. IT'S CALLED "CRITERIA FOR
4 SUBSTANCE DEPENDENCE."
5 Q. THANK YOU.
6 MR. FURR: YOUR HONOR, IF THERE IS NO OBJECTION,
7 I'D LIKE TO DISPLAY THIS TO THE JURY.
8 MS. CHABER: OBJECTION. IT'S HEARSAY.
9 THE COURT: SUSTAINED.
10 MR. FURR: YOUR HONOR, IT'S BEEN PREVIOUSLY
11 EXPLAINED TO THE JURY DURING THE EXAMINATION OF OTHER
12 WITNESSES.
13 THE COURT: IT HAS?
14 MR. FURR: YES.
15 MS. CHABER: NO.
16 MR. FURR: DURING THE EXAMINATION OF DR.
17 BENOWITZ, IT WAS, YOUR HONOR.
18 MS. CHABER: NO, IT WASN'T.
19 MR. FURR: I'M REPRESENTING TO THE COURT THAT IT
20 WAS.
21 THE COURT: DO YOU WANT TO JUST SHOW IT TO
22 MS. CHABER AND SEE IF THE TWO OF YOU STILL DISAGREE?
23 MR. FURR: SURE.
24 MS. CHABER: I DISAGREE. I BELIEVE HE PUT IT ON
25 A CHART UP THERE, BUT I DON'T BELIEVE THAT THIS WAS SHOWN TO
26 THE JURY.
27 THE COURT: WELL, IF I HAVE TO RESOLVE THIS, WE
28 ARE GOING TO GET OUT WHAT YOU SHOWED THEM.
5048
1 IT WAS ON A BOARD, YOU SAY?
2 MS. CHABER: I BELIEVE HE WROTE OUT -- MR. FURR
3 OR WHOEVER CROSS-EXAMINED DR. BENOWITZ WROTE OUT THEIR OWN
4 LIST.
5 THE COURT: THAT WON'T BE A JUSTIFICATION FOR
6 SHOWING THIS.

7 MR. FURR: THAT'S NOT WHAT WAS DONE. I DON'T
8 WANT TO BELABOR THIS, BUT THIS IS WHAT I DISPLAYED TO THE
9 JURY DURING THE EXAMINATION OF DR. BENOWITZ.

10 THE COURT: ALL I CAN SAY IS I CAN'T RECALL
11 WHETHER YOU DID OR YOU DIDN'T.

12 AND IF THERE IS HEARSAY OBJECTION, I'M GOING TO
13 SUSTAIN. I JUST CAN'T RECALL WHETHER YOU DID IT BEFORE OR
14 NOT.

15 WHETHER YOU DID IT BEFORE OR NOT, IT IS HEARSAY.
16 SO I'M GOING TO SUSTAIN.

17 MR. FURR: Q. DR. BECKSON, WOULD YOU EXPLAIN
18 TO THE JURY HOW THE DSM-IV CRITERIA ARE USED TO MAKE
19 DIAGNOSES OF SUBSTANCE DEPENDENCE IN TERMS OF HOW MANY
20 CRITERIA HAVE TO BE SATISFIED, IN WHAT TIME FRAME THEY HAVE
21 TO BE SATISFIED.

22 A. OKAY. IN ORDER TO SATISFY THE CRITERIA, YOU NEED
23 TO HAVE THREE OUT OF THE SEVEN POSSIBILITIES IN ORDER TO
24 QUALIFY FOR THE SUBSTANCE-DEPENDENCE DIAGNOSIS.

25 THOSE THREE OUT OF SEVEN HAVE TO OCCUR WITHIN THE
26 SAME YEAR, THE SAME 12-MONTH PERIOD. AND IF THEY DO, THEN
27 THE PERSON HAS TO ALSO BE EXPERIENCING CLINICALLY
28 SIGNIFICANT DISTRESS OR IMPAIRMENT.

5049 1 Q. WHAT DO YOU MEAN THAT "THE PERSON HAS TO BE ALSO
2 EXPERIENCING CLINICALLY SIGNIFICANT DISTRESS OR IMPAIRMENT"?

3 A. THE PERSON FOR WHOM AT LEAST THREE OUT OF SEVEN
4 CRITERIA ARE MET HAS TO BE SUFFERING -- SUBJECTIVELY,
5 EMOTIONALLY EXPERIENCING SUFFERING THAT THEY COMMUNICATE TO
6 SOMEONE OR THAT'S OBVIOUS.

7 AND THE IMPAIRMENT PART IS IMPAIRMENT IN
8 PSYCHOLOGICAL, SOCIAL, OCCUPATIONAL FUNCTIONING, AND THE
9 LIKE.

10 Q. DO YOU HAVE AN OPINION THAT YOU HOLD TO A
11 REASONABLE DEGREE OF MEDICAL CERTAINTY AS TO WHETHER MRS.
12 WHITELEY WAS NICOTINE-DEPENDENT UNDER THE DSM-IV DIAGNOSTIC
13 SCHEME?

14 A. YES, I DO HAVE AN OPINION.

15 Q. WHAT IS YOUR OPINION?

16 A. BASED ON ALL OF THE INFORMATION THAT I REVIEWED,
17 I COULD NOT GET MRS. WHITELEY, WITH HER PRESENTING
18 INFORMATION, TO SATISFY THE DSM-IV CRITERIA FOR SUBSTANCE
19 DEPENDENCE.

20 Q. OKAY. YOU TOLD US THAT IN ORDER TO BE -- TO
21 SATISFY THOSE CRITERIA, THE THREE OF THEM WOULD HAVE TO BE
22 SATISFIED BEFORE A DIAGNOSIS COULD BE MADE; CORRECT, SIR?

23 A. THAT'S THE BEGINNING OF THE PROCESS.

24 YOU NEED TO START OUT WITH AT LEAST GETTING
25 THREE, FOLLOWED BY MAKING SURE THEY ARE IN THE SAME 12-MONTH
26 PERIOD, FOLLOWED BY THE EXISTENCE OF CLINICALLY SIGNIFICANT
27 DISTRESS OR IMPAIRMENT.

28 Q. WHAT CRITERIA UNDER DSM-IV DO YOU FIND

5050 1 MRS. WHITELEY NOT TO SATISFY?

2 A. MOST OF THEM.

3 Q. ARE THERE ANY THAT SHE DID SATISFY?

4 A. YES. SHE DID SATISFY NO. 2, WHICH IS WITHDRAWAL,
5 AS MANIFESTED BY THE CHARACTERISTIC WITHDRAWAL SYNDROME FOR
6 THE SUBSTANCE, IN THIS CASE, NICOTINE.

7 SO SHE DID MANIFEST WITHDRAWAL.

8 Q. MAY I SEE THOSE, DOCTOR.

9 (WRITING ON BOARD)

10 I HAND THOSE BACK TO YOU, SO YOU HAVE THEM
11 AVAILABLE.

12 DOCTOR, THE FIRST CRITERIA UNDER DSM-IV IS
13 "TOLERANCE"; IS THAT CORRECT?
14 A. THAT IS CORRECT.
15 Q. EXPLAIN TO US WHAT "TOLERANCE" MEANS, AND PROVIDE
16 US YOUR OPINION AS TO WHETHER MRS. WHITELEY SATISFIED
17 TOLERANCE.
18 A. WHAT "TOLERANCE" MEANS, THAT'S ESSENTIALLY THE
19 PERSON CHASES THE ORIGINAL HIGH THAT THEY GOT FROM A DRUG OF
20 ABUSE, BECAUSE AS THEY KEEP USING, THEY DON'T GET AS HIGH
21 ANYMORE.
22 AND SO ADDICTION SOMETIMES HAS BEEN COLLOQUIALLY
23 DESCRIBED AS AN ADDICT CHASING THE ORIGINAL HIGH FOR THE
24 REST OF THEIR LIFE.
25 IN THE DSM-IV, IT'S DESCRIBED AS A NEED FOR
26 MARKEDLY INCREASED AMOUNTS OF THE SUBSTANCE.
27 MS. CHABER: I WOULD OBJECT, YOUR HONOR.
28 READING FROM THE DOCUMENT.

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1 THE COURT: MY NOTES SHOW THAT PAGE 181 OF 5857
2 WAS SHOWN TO THE JURY.
3 IS THAT THE PAGE THAT WE ARE TALKING ABOUT?
4 MR. FURR: THAT IS, YOUR HONOR, MY
5 REPRESENTATION.
6 THE COURT: THAT'S WHAT I HAVE.
7 MS. CHABER: 181?
8 THE COURT: YES.
9 MS. CHABER: I'M SORRY, YOUR HONOR. I REALLY
10 THOUGHT HE HAD DONE A CHART. IF IT WAS, IT WAS ON
11 CROSS-EXAMINATION OF ANOTHER WITNESS.
12 THE COURT: YES. IT WAS ON DR. BENOWITZ.
13 MS. CHABER: RIGHT. SO --
14 THE COURT: IF YOU WANT TO MAKE THE OBJECTION,
15 IT'S STILL A GOOD OBJECTION.
16 I JUST BELIEVE THAT HE DID SHOW IT.
17 MS. CHABER: I WASN'T --
18 THE COURT: IF YOU OBJECT, IT STILL IS A GOOD
19 OBJECTION.
20 MS. CHABER: I WASN'T TRYING TO MISREPRESENT TO
21 THE COURT. THAT WAS MY RECOLLECTION.
22 THE COURT: I'M SURE IT WAS. WITH THE OBJECTION
23 BEING MAINTAINED, I'M GOING TO SUSTAIN.
24 MS. CHABER: OKAY.
25 THE COURT: OKAY.
26 MS. CHABER: I THINK THERE WAS ANOTHER
27 OBJECTION, YOUR HONOR.
28 THE COURT: SHE SAID HE WAS READING.

5052

1 AND I'LL SUSTAIN, BECAUSE THAT'S THE SAME THING.
2 MR. FURR: OKAY.
3 Q. DR. BECKSON, THE SECOND CRITERION UNDER DSM-IV IS
4 "WITHDRAWAL"; CORRECT?
5 A. THAT'S CORRECT.
6 Q. BY THE WAY, DR. BECKSON, THE RULES ARE THAT YOU
7 CANNOT READ. IF YOU NEED TO REFRESH YOUR RECOLLECTION, I
8 BELIEVE THAT WILL BE OKAY WITH THE COURT. YOU CAN DO THAT.
9 IN THE COURSE OF ANSWERING MY QUESTIONS, YOU JUST
10 CAN'T READ OR RECITE THE DOCUMENT TO THE JURY. OKAY?
11 A. THANKS FOR CLARIFYING THAT.
12 Q. BEFORE I LEAVE THE FIRST CRITERION, TOLERANCE,
13 DID MRS. WHITELEY SATISFY THE DSM-IV CRITERION OF TOLERANCE?
14 A. WITH NICOTINE AND CIGARETTE SMOKING, IF YOU'RE
15 GOING TO SATISFY THE CRITERIA FOR TOLERANCE, IT GENERALLY
16 HAPPENS IN THE VERY BEGINNING OF A SMOKING CAREER. BECAUSE

17 A PERSON, BEFORE THEY SMOKE, SMOKES NO CIGARETTES, AND THEN
18 THEY SMOKE ONE, AND THEN THEY USUALLY BUILD UP TO SMOKING
19 THEIR HALF A PACK TO A PACK A DAY.

20 SO, YOU KNOW, IT DEPENDS ON HOW YOU DEFINE THE
21 WORD "MARKEDLY" THAT'S USED IN THE DSM-IV.

22 AND NICOTINE DOESN'T BEHAVE LIKE HEROIN, FOR
23 EXAMPLE, WHERE PEOPLE ARE USING 10, 100 TIMES THEIR ORIGINAL
24 AMOUNT AND STILL NOT GETTING HIGH.

25 INSTEAD, PEOPLE DO INCREASE THEIR CIGARETTE
26 CONSUMPTION UNTIL THEY REACH A PLATEAU AND THEN THEY SMOKE
27 ABOUT THE SAME AMOUNT AFTER THAT. THEY STILL GET THEIR
28 HIGH.

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1 SO IF YOU WANT TO BE CHARITABLE, YOU COULD SAY
2 THAT, IN THE VERY BEGINNING OF HER SMOKING CAREER, AS AN
3 ADOLESCENT, SHE EXPERIENCED TOLERANCE, BUT THAT THAT BECAME
4 BASICALLY A MOOT ISSUE AFTER SHE WAS AT HER LATE
5 ADOLESCENCE, HER EARLY ADULTHOOD.

6 Q. DID YOU SEE ANY EVIDENCE THAT MRS. WHITELEY
7 INCREASED HER SMOKING RATE AFTER HER LATE ADOLESCENCE OR HER
8 EARLY ADULTHOOD?

9 A. NO. IN FACT, REVIEWING THE MEDICAL RECORDS,
10 INCLUDING QUESTIONNAIRES FILLED OUT BY MRS. WHITELEY
11 HERSELF, THEY ALL REFER TO HALF A PACK TO A PACK,
12 THREE-QUARTERS OF PACK TO A PACK, A PACK.

13 SO, YOU KNOW, JUST TO TAKE A HIGH END OF MOST OF
14 THOSE NUMBERS, IT APPEARS TO ME THAT SHE WAS A PACK-A-DAY
15 SMOKER FOR 20 YEARS OR SO.

16 Q. THE SECOND CRITERION UNDER DSM-IV IS
17 "WITHDRAWAL", ISN'T IT?

18 A. THAT'S CORRECT.

19 Q. I BELIEVE THAT'S THE CRITERION THAT YOU ALREADY
20 TESTIFIED THAT MRS. WHITELEY MAY HAVE SATISFIED?

21 A. YES, I DID.

22 Q. THE THIRD CRITERION IS WHERE "THE SUBSTANCE IS
23 TAKEN IN A LARGER AMOUNT OR FOR A LONGER TIME THAN THE USER
24 INTENDED TO"; IS THAT CORRECT?

25 A. THAT'S CORRECT.

26 Q. DID MRS. WHITELEY SATISFY THAT CRITERION?

27 A. NO, SHE DIDN'T. IN FACT, THIS CRITERION ACTUALLY
28 REFLECTS HOW SOMEONE, ON MULTIPLE OCCASIONS, IN MORE OF AN

5054

1 ACUTE SENSE, HANDLES THEIR SUBSTANCE.

2 IT REALLY REFERS TO THE PERSON WHO IS GOING OUT
3 FOR THE EVENING AND TELLS THEMSELF, "TONIGHT, I'M GOING TO
4 HAVE TWO DRINKS."

5 OF COURSE, THEY DRINK TWO BOTTLES OF WINE AND GET
6 DRUNK. THAT'S USING MORE THAN INTENDED.

7 AND OVER A LONGER PERIOD OF TIME, IT IS, "I'M
8 JUST GOING TO PARTY TONIGHT, FRIDAY NIGHT," BUT THEN THE
9 COCAINE USER MISSES WORK ON MONDAY BECAUSE THEY USE ALL
10 WEEKEND LONG AND COULDN'T STOP. SO THAT'S WHAT THOSE
11 CRITERIA REFER TO.

12 AND THAT'S NOT THE CASE WITH MRS. WHITELEY. SHE
13 GENERALLY SMOKED IN A RELATIVELY STABLE FASHION.

14 Q. THE FOURTH CRITERION IS WHETHER "THERE HAS BEEN A
15 PERSISTENT DESIRE OR A SERIES OF SUCCESSFUL EFFORTS TO
16 QUIT"; IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. DID MRS. WHITELEY SATISFY THAT CRITERION?

19 A. NO, SHE DIDN'T. MRS. WHITELEY DID NOT HAVE A
20 PERSISTENT DESIRE TO QUIT SMOKING. IN FACT, ONLY AT THE
21 POINT IN 1998 WHEN SHE DID QUIT DID SHE SEEM TO HAVE A

22 DESIRE TO QUIT.
23 AND SHE ONLY HAD ONE UNSUCCESSFUL EFFORT. SO
24 THAT'S NOT EVEN CONSISTENT WITH THE WORDS "UNSUCCESSFUL
25 EFFORTS" IN THE PLURAL.
26 Q. THE FIFTH CRITERION IS WHETHER THE USER SPENDS "A
27 GREAT DEAL OF TIME AND ACTIVITIES RELATED TO OBTAINING OR
28 USING THE SUBSTANCE", CORRECT?
5055
1 A. THAT IS CORRECT.
2 Q. HOW WOULD THAT CRITERION APPLY TO SMOKING,
3 DOCTOR?
4 A. WELL, THIS PARTICULAR CRITERION -- YOU HAVE TO
5 UNDERSTAND THAT THESE ARE CRITERIA OF ADDICTION. AND THE
6 WAY PEOPLE SMOKE CIGARETTES AND THE FACT THAT IT IS READILY
7 AVAILABLE, IT'S VERY, VERY UNUSUAL FOR PEOPLE TO BE ABLE TO
8 SATISFY THIS CRITERION IN THE FIRST PLACE.
9 SO, YOU KNOW, SHE SMOKED, AND IT TOOK WHATEVER
10 TIME IT DID, BUT IT WASN'T A GREAT DEAL OF TIME.
11 Q. THE SIXTH CRITERION IS ESSENTIALLY WHERE THE USER
12 MISSES OTHER IMPORTANT OPPORTUNITIES IN THEIR LIFE IN ORDER
13 TO USE THE SUBSTANCE; IS THAT CORRECT?
14 A. THAT IS CORRECT.
15 Q. DID YOU FIND ANY EVIDENCE THAT MRS. WHITELEY EVER
16 SATISFIED THAT CRITERION?
17 A. NO. I BELIEVE THAT HER SMOKING BEHAVIOR WAS
18 ENTIRELY CONSISTENT WITH HER -- COMPATIBLE WITH HER ENGAGING
19 IN IMPORTANT SOCIAL, OCCUPATIONAL OR RECREATIONAL
20 ACTIVITIES.
21 Q. DOCTOR, THE SEVENTH CRITERION INVOLVES WHETHER
22 THE SUBJECT CONTINUED TO USE THE SUBSTANCE IN THE FACE OF AN
23 ONGOING PHYSICAL PROBLEM RELATED TO THE USE; IS THAT
24 CORRECT?
25 A. THAT'S NOT EXACTLY RIGHT.
26 Q. COULD YOU EXPLAIN TO US WHAT IT IS THEN?
27 A. IT HAS TO DO WITH "CONTINUED USE DESPITE
28 KNOWLEDGE OF HAVING A PERSISTENT OR RECURRENT PHYSICAL OR
5056
1 PSYCHOLOGICAL PROBLEM THAT IS CAUSED OR EXACERBATED BY THE
2 SUBSTANCE."
3 SO JUST TO CLARIFY, THAT MEANS THAT THE PERSON
4 HAS A PROBLEM THAT'S DUE TO THE SUBSTANCE, AND THEY KNOW
5 THAT THEY HAVE THIS PROBLEM BECAUSE OF THE SUBSTANCE, AND
6 EVEN DESPITE THAT, THEY STILL GO OUT AND USE. THAT'S THE
7 USE DESPITE KNOWLEDGE OF ADVERSE CONSEQUENCES.
8 Q. SO THE USER NOT ONLY HAS A PHYSICAL PROBLEM BUT
9 KNOWS THAT THAT PROBLEM WAS RELATED TO THE USE?
10 A. CORRECT.
11 Q. I THINK IT'S PROBABLY OBVIOUS, DOCTOR, BUT WHAT
12 IS YOUR OPINION WITH RESPECT TO WHETHER MRS. WHITELEY WAS
13 DEPENDENT ON NICOTINE UNDER THE DSM-IV CRITERIA?
14 A. WELL, SHE CLEARLY WAS NOT SUBSTANCE-DEPENDENT
15 ACCORDING TO THE DSM-IV CRITERIA, BECAUSE SHE DOES NOT HAVE
16 THREE OUT OF THE SEVEN CRITERIA THAT ARE THE BASIC
17 REQUIREMENTS AS YOU GET INTO THE PROCESS OF MAKING THE
18 DIAGNOSIS.
19 Q. YOU MADE A COUPLE OF POINTS THAT I WANT YOU TO
20 CLARIFY FOR US.
21 YOU DESCRIBED THESE CRITERIA AS GENERAL CRITERIA
22 FOR SUBSTANCE DEPENDENCE, AND AT LEAST WITH RESPECT TO ONE,
23 YOU EXPRESSED A VIEW THAT THE CRITERION IS NOT NECESSARILY A
24 GOOD FIT FOR THE USE IN MAKING NICOTINE DEPENDENCE
25 DIAGNOSES; CORRECT?
26 A. I DID REFER TO THAT, YES.

27 Q. DOCTOR, I TAKE IT WHAT YOU'RE TELLING US, THESE
28 GENERAL CRITERIA HAVE SOME LIMITATIONS WITH RESPECT TO THE

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1 DIAGNOSIS OF NICOTINE DEPENDENCE?

2 A. WELL, I THINK THAT THE MORE ACCURATE STATEMENT IS
3 THAT NICOTINE AS A SUBSTANCE HAS SOME LIMITATIONS IN ITS
4 CHARACTERISTICS, SUCH THAT WHAT'S RECOGNIZED AS AN ADDICTIVE
5 PROCESS APPLIES TO NICOTINE UNDER CERTAIN CIRCUMSTANCES, BUT
6 THAT IT'S NOT AN EXACT SAME TYPE OF SUBSTANCE AS THE
7 TRADITIONAL ADDICTIVE DRUGS, LIKE HEROIN, COCAINE, ALCOHOL
8 AND SO FORTH.

9 SO IT DOESN'T MEAN NICOTINE IS NOT ADDICTIVE.
10 IT'S JUST THAT EVERY SUBSTANCE THAT PEOPLE CAN HAVE PROBLEMS
11 FROM HAVE THEIR OWN CHARACTERISTIC QUALITIES.

12 FOR EXAMPLE, CAFFEINE, WHICH YOU CAN DEVELOP A
13 DSM-IV DIAGNOSIS FOR IN TERMS OF CAFFEINE INTOXICATION.
14 THERE'S A CHART IN THE DSM-IV WHICH LOOKS AT ALL THE
15 DIFFERENT SUBSTANCES AND COMPARES THEIR CHARACTERISTICS.
16 AND IT SPEAKS TO THE FACT THAT EVERY SUBSTANCE IS ITS OWN
17 SUBSTANCE WITH ITS OWN QUALITIES.

18 Q. LET ME ASK YOU ABOUT ANOTHER INSTRUMENT, DOCTOR.
19 ARE YOU FAMILIAR WITH SOMETHING CALLED THE
20 FAGERSTROM TOLERANCE QUESTIONNAIRE?

21 A. YES, I AM.

22 Q. EXPLAIN TO THE JURY WHAT THAT QUESTIONNAIRE IS.

23 A. THE FAGERSTROM TOLERANCE QUESTIONNAIRE IS A
24 QUESTIONNAIRE DEVELOPED BY KARL-OLAF FAGERSTROM, WHO WAS A
25 PHYSICIAN BACK IN 1978.

26 AND THE IDEA WAS TO DEVELOP A SCALE THAT COULD
27 DETERMINE PHYSICAL DEPENDENCE ON NICOTINE -- NOT ADDICTION
28 TO NICOTINE, BUT JUST THE PHYSICAL DEPENDENCE THAT WE TALK

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1 IN TERMS OF TOLERANCE AND WITHDRAWAL, WHICH IS JUST A SMALL
2 PART, NOT EVEN A NECESSARY OR SUFFICIENT SET OF CRITERIA FOR
3 ADDICTION. JUST LOOKING AT ONE ASPECT OF NICOTINE TOLERANCE
4 AND WITHDRAWAL.

5 Q. DR. BECKSON, DO YOU HAVE AN OPINION AS TO WHETHER
6 THE FAGERSTROM TOLERANCE QUESTIONNAIRE IS AN ACCURATE TOOL
7 FOR ASSESSING TOLERANCE TO THE USE OF NICOTINE?

8 A. THERE'S BEEN RESEARCH TO DEMONSTRATE THAT THE
9 QUESTIONNAIRE IS NOT VALID FOR THE MEASUREMENT OF TOLERANCE
10 TO NICOTINE.

11 Q. DR. BECKSON, IN YOUR CLINICAL PRACTICE, DO YOU
12 SEE PATIENTS WITH VARIOUS DEGREES OF ADDICTION; THAT IS, DO
13 YOU SEE SOME PATIENTS THAT ARE MORE HIGHLY ADDICTED THAN
14 OTHERS?

15 A. YES, I DO.

16 Q. LET ME ASK YOU -- LET'S PUT ASIDE THE DSM-IV AND
17 THE FAGERSTROM QUESTIONNAIRE FOR A MOMENT. LET'S USE YOUR
18 WORKING DEFINITION OF "ADDICTION" THAT YOU EXPLAINED TO US
19 THIS MORNING.

20 DO YOU HAVE AN OPINION AS TO WHETHER MRS.
21 WHITELEY WAS ADDICTED TO CIGARETTE SMOKING?

22 A. YES, I DO.

23 Q. AND IS WHAT YOUR OPINION?

24 A. MY OPINION IS THAT MRS. WHITELEY WAS NOT ADDICTED
25 ACCORDING TO HOW I ASSESS PATIENTS AS HAVING ADDICTION.

26 Q. AND WHY DO YOU HOLD THAT OPINION?

27 A. ESSENTIALLY, BECAUSE MAKING A DECISION TO USE A
28 SUBSTANCE, EVEN IF IT'S A BAD DECISION, DOES NOT MAKE

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1 SOMEONE AN ADDICT. AND PSYCHIATRY HAS BEEN VERY CLEAR IN
2 NOT WANTING TO PATHOLOGIZE NORMAL PEOPLE WHO ARE GOING ABOUT

3 THEIR DAILY LIFE MAKING DECISIONS FOR THEMSELVES.

4 SO THAT JUST BECAUSE YOU MIGHT DISAGREE WITH
5 SOMEONE'S DECISION, EVEN IF IT TURNS OUT TO BE YOU WERE
6 RIGHT AND IT WAS A BAD DECISION, THAT PERSON IS ASSUMED,
7 UNLESS THEY'RE INCOMPETENT, TO HAVE DECISION-MAKING
8 CAPABILITY TO CONTROL THEIR BEHAVIOR AND TO MAKE A DECISION
9 FOR THEMSELVES ABOUT WHAT THEY'RE GOING TO DO WITH THEIR
10 LIFE, HOW THEY'RE GOING TO RAISE THEIR KIDS, WHAT KIND OF
11 HOBBIES THEY ARE GOING TO PURSUE.

12 IN REGARD TO ADDICTION, WHICH IS A PATHOLOGICAL
13 DISORDER, IT'S LIMITED TO PEOPLE WHO ARE SUFFERING IN AN
14 ONGOING WAY, WHERE HELP CAN BE GIVEN TO INTERVENE AND ASSIST
15 SOMEONE IN HEALING OR GETTING BETTER.

16 AND IN MRS. WHITELEY'S CASE, SHE NEVER GOT INTO
17 THE SITUATION THAT I SEE WITH ADDICTS ALL THE TIME, WHICH IS
18 SHE WAS SUFFERING CONSEQUENCES, KNEW THOSE CONSEQUENCES WERE
19 CAUSED BY HER BEHAVIOR OR HER CIGARETTES, WAS DESPERATE TO
20 STOP USING, WANTED TO STOP USING, COULDN'T STOP USING.
21 THAT'S THE PICTURE OF AN ADDICT.

22 THAT'S NEVER THE PICTURE IN ANY OF THE RECORDS I
23 REVIEWED IN THIS CASE.

24 Q. LET ME ASK YOU ABOUT THE SECOND OPINION I ASKED
25 YOU TO FORM IN THIS CASE, AND THAT'S MRS. WHITELEY'S ABILITY
26 TO UNDERSTAND INFORMATION RELATED TO SMOKING AND HEALTH.

27 DR. BECKSON, WHAT IS YOUR UNDERSTANDING OF THE
28 INFORMATION THAT MRS. WHITELEY RECEIVED FROM HER DOCTORS,

5060 1 FRIENDS AND FAMILY MEMBERS REGARDING THE RISK OF SMOKING?

2 A. MY REVIEW OF THE RECORDS REVEALED THAT MRS.
3 WHITELEY RECEIVED QUITE A BIT OF INFORMATION OVER THE YEARS
4 FROM HER DOCTORS AND HER FAMILY.

5 IN FACT, JUST BEGINNING WITH HER DOCTORS, HER
6 FAMILY DOCTOR, DR. JUNG, PRIDES HIMSELF ON BEING AN
7 ANTISMOKING ADVOCATE IN HELPING IDENTIFY SMOKING PROBLEMS IN
8 HIS PATIENTS, CONFRONTING THEM ABOUT THEIR SMOKING BEHAVIOR,
9 DISCUSSING THE RISKS, AND PROVIDING INFORMATION AND
10 ASSISTANCE TO HELP THEM QUIT, INCLUDING NICOTINE GUM,
11 NICOTINE PATCHES, ZYBAN, THE MEDICATION THAT YOU CAN TAKE TO
12 HELP YOU QUIT.

13 AND HE WAS VERY CLEAR WHEN HE SAYS IN HIS
14 DEPOSITION, WITH MRS. WHITELEY. THAT SHE SHOULD QUIT. HE
15 EXPLAINED THE RISKS TO HER. HE ENCOURAGED HER TO QUIT ON
16 MULTIPLE OCCASIONS.

17 AND HE STATED IN HIS DEPOSITION THAT HER RESPONSE
18 WAS SOMETHING ALONG THE LINES, "I'M NOT READY TO QUIT."

19 HER OBSTETRICIAN, DR. RICHARDSON, AS PER THE
20 STANDARD OF PRACTICE FOR OBSTETRICIANS, DISCUSSED HER
21 SMOKING BEHAVIOR AND THE RISKS OF HER SMOKING BEHAVIOR,
22 PARTICULARLY REGARDING HER UNBORN CHILDREN, WHEN SHE GOT
23 PREGNANT, AS PART OF THE STANDARD PRENATAL CARE.

24 WE KNOW THAT SHE HAD FOUR PREGNANCIES. THAT'S
25 HER DOCTORS.

26 NOW, HER HUSBAND LEONARD ALSO WAS A PATIENT OF
27 DR. JUNG, THE FAMILY PRACTITIONER. AND LEONARD, IN HIS
28 DEPOSITION, REPORTS THAT DR. JUNG WAS RIDING HIM CONSTANTLY

5061 1 ABOUT HIS SMOKING BEHAVIOR.

2 LEONARD, IN FACT, DEVELOPED A SIGNIFICANT COUGH
3 FROM CHRONIC BRONCHITIS. DR. JUNG IDENTIFIED THAT AS BEING
4 A SYMPTOM OF THE EFFECTS OF HIS SMOKING.

5 DR. JUNG WAS HIGHLY ANTISMOKING. AS PER LEONARD
6 WHITELEY'S DEPOSITION, HE SAID, "DR. JUNG IS A REAL BIG
7 ADVOCATE OF SMOKING CESSATION."

8 DR. JUNG, ABOUT THREE OR FOUR YEARS BEFORE THE
9 TIME OF THE DEPOSITION, HAD CONFRONTED LEONARD WHITELEY
10 ABOUT THE FACT THAT NOT ONLY DID HE HAVE CHRONIC BRONCHITIS
11 WITH HIS PERSISTENT COUGH, BUT HE HAD BLOOD PRESSURE
12 PROBLEMS WHICH WERE BEING EXACERBATED BY HIS CIGARETTE
13 SMOKING, AND HE WAS GOING DOWN THE ROAD OF PROGRESSION
14 TOWARD POSSIBLE EMPHYSEMA.

15 AND THEN LEONARD TESTIFIED IN HIS DEPOSITION THAT
16 HE TOOK ALL OF THIS INFORMATION HOME AND DISCUSSED IT WITH
17 LESLIE WHITELEY AND SHARED DR. JUNG'S WARNINGS.

18 AND THAT IN RESPONSE TO THIS, LESLIE WHITELEY
19 WASN'T SURPRISED. IT WASN'T LIKE SHE WAS SHOCKED THAT,
20 "LOOK AT ALL THESE HEALTH PROBLEMS THAT YOU HAVE. SHE
21 DIDN'T DO THAT. HE SAID SHE DIDN'T -- SHE WASN'T
22 SURPRISED.

23 IN ADDITION TO THAT, HER EX-HUSBAND, DEAN MOORE,
24 WHO SHE MARRIED WHEN SHE LEFT HOME, REPORTED, AS HER
25 CONTEMPORARY, HE ALSO KNEW THAT CIGARETTES WERE DANGEROUS TO
26 ONE'S HEALTH, AND THAT THEY WERE ADDICTIVE.

27 AND WHEN HE WAS MARRIED WITH LESLIE WHITELEY,
28 LESLIE'S MOTHER HAD A TALK WITH BOTH OF THEM. LESLIE'S

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1 MOTHER WAS VERY ANTISMOKING AND DISCUSSED HER OWN
2 DIFFICULTIES WHEN SHE QUIT. IT WAS A HARD THING THAT SHE
3 HAD TO GO THROUGH TO QUIT.

4 ON TOP OF THAT, LESLIE'S OLDER SISTER, REBECCA,
5 TALKED ABOUT THE FACT THAT THREE OR FOUR YEARS PRIOR TO THE
6 DEPOSITION, SHE AND LESLIE HAD A CONVERSATION ABOUT THE
7 HEALTH DANGERS OF SMOKING AND THAT SHE PROBABLY SHOULD
8 QUIT.

9 AND ON TOP OF THAT, REBECCA REPORTS THAT LESLIE'S
10 ELDEST SISTER CHRIS IS A REGISTERED NURSE, WHO HAS BEEN
11 VEHEMENTLY ANTISMOKING FOR 20 YEARS, WHOSE HUSBAND IN TURN
12 SUFFERS FROM A HEART PROBLEM, WHICH CHRIS BELIEVES IS
13 BECAUSE OF SMOKING. AND THAT CHRIS HAD A VERY DETAILED
14 CONVERSATION WITH LESLIE'S SISTER ABOUT HER FEELINGS. AND I
15 WOULD SUSPECT THAT MAY HAVE BEEN THE CASE AS WELL WITH
16 LESLIE.

17 MS. CHABER: WELL, I MOVE TO STRIKE THAT
18 COMMENT. CALLS FOR SPECULATION.

19 THE COURT: OKAY. IT'S NOT BEING OFFERED AS
20 EVIDENCE OF THE TRUTH OR ACCURACY.

21 AS I UNDERSTAND IT, IT IS BEING OFFERED AS
22 EVIDENCE OF THE UNDERSTANDING THAT HE HAS IN TERMS OF THE
23 JURY'S EVALUATING HIS OPINIONS; RIGHT?

24 MR. FURR: YES.

25 MS. CHABER: AND I HAVE NOT OBJECTED, YOUR
26 HONOR, UP UNTIL THIS MOMENT. BUT HE TALKED ABOUT HE
27 SUSPECTS THERE MAY HAVE BEEN SOME CONVERSATIONS WITHOUT ANY
28 EVIDENCE OF --

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1 THE COURT: WHAT I'M SAYING TO YOU IS, THIS IS
2 NOT BEING OFFERED -- I CAN GIVE A LIMITING INSTRUCTION, IF
3 YOU WANT. THIS IS NOT BEING OFFERED AS EVIDENCE OF THE
4 TRUTH OR THE ACCURACY OF THIS INFORMATION. THIS IS BEING
5 OFFERED AS THE ASSUMPTIONS THAT THIS DOCTOR IS MAKING IN
6 TERMS OF EVALUATING HIS OPINION.

7 SO WHETHER OR NOT IT IS SUPPORTED OR IN YOUR VIEW
8 IS NOT IS REALLY NOT THE PURPOSE FOR THE OFFER.

9 BUT PROBABLY MR. FURR WON'T OBJECT IF I STRIKE
10 THAT.

11 MR. FURR: I DON'T OBJECT, YOUR HONOR.

12 MS. CHABER: AND I WOULD OBJECT AND ASK FOR THE

13 LIMITING INSTRUCTION.
14 THE COURT: I UNDERSTAND THAT YOU'RE ASKING THIS
15 QUESTION WHAT ABOUT THE DOCTOR READ IN THE DEPOSITION. YOU
16 ARE NOT OFFERING THAT AS EVIDENCE THAT THOSE THINGS
17 OCCURRED. YOU'RE OFFERING THAT AS INFORMATION THAT THIS
18 DOCTOR HAD IN TERMS OF THE JURY EVALUATING THE OPINION THAT
19 YOU ARE NOW GOING TO ELICIT FROM HIM.
20 MR. FURR: OF COURSE, YOUR HONOR. THIS IS
21 FOUNDATION FOR THE NEXT QUESTION.
22 THE COURT: THAT'S WHAT I THOUGHT. LET ME JUST
23 EXPLAIN THAT TO THE JURY.
24 WHATEVER THE EVIDENCE HAS BEEN IN THIS CASE, IT'S
25 BEEN. BUT THIS QUESTION -- WHEN THIS WITNESS IS TELLING YOU
26 WHAT HE READ IN THE DEPOSITIONS, THIS IS NOT BEING OFFERED
27 AS EVIDENCE THAT THESE THINGS ACTUALLY OCCURRED. IT'S BEING
28 OFFERED ONLY AS EVIDENCE OF THE INFORMATION THAT THIS DOCTOR
5064
1 HAD SO THAT YOU CAN EVALUATE HIS OPINIONS, BECAUSE YOU CAN
2 EVALUATE THAT AGAINST THE BACKGROUND OF THIS AS THE
3 INFORMATION HE HAD.
4 AND SO IT'S NOT BEING OFFERED, AND YOU MAY NOT
5 CONSIDER IT AS EVIDENCE THAT THESE THINGS OCCURRED THAT HE
6 SAYS HE READ ABOUT.
7 BUT YOU MAY CONSIDER IT, THE ASSUMPTIONS HE'S
8 MAKING, HIS WORKING HYPOTHESIS, IN TERMS OF YOUR EVALUATING
9 HIS OPINION.
10 DO YOU BOTH THINK THAT'S A FAIR STATEMENT OF
11 WHAT'S GOING ON HERE?
12 MS. CHABER: YES, YOUR HONOR.
13 MR. FURR: YES.
14 THE COURT: THAT IS MY UNDERSTANDING. OKAY.
15 I HOPE THAT WAS HELPFUL.
16 MS. CHABER: WHATEVER IS MY RESPONSE TO THAT.
17 THE COURT: OKAY.
18 MS. CHABER: I'M SURE THE COURT IS CORRECT.
19 THE COURT: OKAY.
20 MR. FURR: Q. DR. BECKSON, I HOPE YOU REMEMBER
21 WHERE YOU WERE, BECAUSE I'M NOT GOING TO ASK THE COURT
22 REPORTER TO READ THAT ANSWER BACK.
23 THE COURT: SINCE THERE IS NO OBJECTION TO IT, I
24 WILL STRIKE THE REFERENCE TO "I SPECULATE" OR "I GUESS."
25 THAT, I'LL STRIKE THAT. YOU CAN PICK UP.
26 THE WITNESS: I'LL JUST FINISH UP WITH THE FACT
27 THAT MY UNDERSTANDING WAS THAT HER FAMILY DOCTOR, HER
28 OBSTETRICIAN, AND MULTIPLE FAMILY MEMBERS, HAD CONVERSATIONS
5065
1 WITH LESLIE WHITELEY THAT INCLUDED ISSUES PERTAINING TO THE
2 HEALTH RISKS OF CIGARETTE SMOKING.
3 I WILL LEAVE IT AT THAT.
4 MR. FURR: Q. DR. BECKSON, DO YOU HAVE AN
5 OPINION AS TO WHETHER MRS. WHITELEY WAS MENTALLY COMPETENT
6 TO UNDERSTAND THE TYPE OF INFORMATION ABOUT THE HEALTH RISKS
7 OF SMOKING THAT YOU JUST DESCRIBED?
8 A. YES, I DO.
9 Q. AND WHAT IS YOUR OPINION?
10 A. MY OPINION IN EVALUATING HER EXPOSURE TO
11 UNDERSTAND THAT INFORMATION BEGINS WITH WHAT'S COMMONLY
12 ACCEPTED AS A PRESUMPTION OF COMPETENCE FOR ALL PEOPLE.
13 WE ALWAYS ASSUME THAT, UNLESS PROVED OTHERWISE,
14 THE PERSON IS COMPETENT. SO WHEN YOU EVALUATE ISSUES OF
15 COMPETENCY, YOU LOOK FOR EVIDENCE THAT THE PERSON MIGHT NOT
16 BE COMPETENT.
17 AND THE TYPICAL WAYS THAT PEOPLE ARE NOT

18 COMPETENT TO UNDERSTAND THINGS GENERALLY HAVE TO DO WITH
19 INFERIOR INTELLIGENCE, LIKE MENTAL RETARDATION, DEMENTIA,
20 LIKE ALZHEIMER'S DISEASE, PSYCHOSIS, WHERE SOMEONE IS
21 PARANOID AND HAS LOST THEIR ABILITY TO TELL THE DIFFERENCE
22 BETWEEN REALITY AND FANTASY. THOSE ARE TYPICAL THINGS
23 YOU'RE LOOKING FOR.

24 AND SEEING THE DESCRIPTIONS AND THE PERFORMANCE
25 OF LESLIE WHITELEY IN HER TESTIMONY, EVEN AFTER ALL OF HER
26 CANCER AND HER BRAIN METASTASES, SHE IS A SHARP WOMAN. SHE
27 HAS EXCELLENT RECOLLECTION OF DETAILS OF HER CURRENT MEDICAL
28 HISTORY AND HER PAST HISTORY.

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1 AND I SAW NO EVIDENCE IN WHAT I REVIEWED THAT
2 SUGGESTED THAT SHE WAS MENTALLY INCOMPETENT OR HAD PROBLEMS
3 WITH UNDERSTANDING OR REASONING FOR HERSELF.

4 Q. A DIFFERENT TYPE OF QUESTION, DR. BECKSON.

5 DID MRS. WHITELEY DEMONSTRATE THE ABILITY TO
6 CONTROL HER BEHAVIOR WITH RESPECT TO THE USE OF DRUGS AND
7 ALCOHOL?

8 A. YES, SHE DID. IN FACT, ESSENTIALLY ALL ADDICTS
9 ULTIMATELY MAKE THEIR OWN DECISIONS ABOUT WHETHER TO USE OR
10 NOT. IT COULD BE A HARD DECISION.

11 WHAT I WAS STRUCK BY IN MRS. WHITELEY'S CASE WAS
12 THAT WHEN SHE DECIDED TO QUIT SMOKING FOR HERSELF, SHE QUIT
13 AND SHE REMAINED QUIT.

14 IN FACT, WHEN SHE DECIDED TO QUIT DRINKING, WHICH
15 IS TOUGH, SHE SUCCEEDED, CONSISTENT WITH THE FAMILY OPINION
16 OF HER AS A VERY DETERMINED AND STRONG-WILLED WOMAN.

17 Q. DR. BECKSON, WHAT IS YOUR UNDERSTANDING OF WHEN
18 MRS. WHITELEY QUIT USING MARIJUANA AND ALCOHOL?

19 A. WELL, I HAVE TO RELY UPON WHAT SHE SAYS AND THEN
20 WHAT OTHER MEMBERS OF HER FAMILY AND HER EX-HUSBAND SAY.

21 AND IT APPEARS THAT SHE DISCONTINUED DRINKING AND
22 SMOKING MARIJUANA AND WHATEVER DRUGS THAT SHE HAD USED BY
23 1988.

24 Q. AS A PSYCHIATRIST, CAN YOU OFFER US AN
25 EXPLANATION AS TO WHY MRS. WHITELEY WOULD HAVE BEEN ABLE TO
26 QUIT USING ALCOHOL AND MARIJUANA IN 1988 OR SO, BUT
27 CONTINUED SMOKING CIGARETTES?

28 A. MY UNDERSTANDING IS THAT MRS. WHITELEY AND HER

5067

1 HUSBAND WERE EXPERIENCING PROBLEMS WITH ARGUING WITH EACH
2 OTHER. I KNOW THAT MARITAL DIFFICULTIES ARE A FREQUENT
3 PROBLEM IN COUPLES THAT HAVE ALCOHOL PROBLEMS.

4 THE DEGREE OF HER ALCOHOL USE SEEMED SUCH THAT
5 SHE VERY WELL MIGHT HAVE BEEN ALCOHOL-DEPENDENT. AND SHE
6 AND HER HUSBAND, IN LIGHT OF THEIR FREQUENT ARGUING, MADE A
7 DECISION THAT THEY WERE GOING TO LEAVE ALCOHOL OUT OF THEIR
8 LIVES. THEY WERE BOTH MOTIVATED FOR THEMSELVES TO STOP
9 DRINKING, AND IT HAD NOTHING TO DO WITH SMOKING CIGARETTES.

10 SHE CONTINUED WITH SMOKING, WHICH SHE DIDN'T SEE
11 AS A PROBLEM UNTIL 1998, WHEN, IN RESPONSE TO A BAD EPISODE
12 OF BRONCHITIS, SHE SAID "I DON'T WANT TO SMOKE ANYMORE AND
13 IT'S NOT WORTH IT," AND SHE QUIT.

14 Q. DR. BECKSON, THE LAST TOPIC. I WANT TO ASK YOU
15 ABOUT PREGNANCY AND ADDICTION.

16 IN YOUR PRACTICE, HAVE YOU TREATED PATIENTS WHO
17 WERE PREGNANT FOR PROBLEMS OF ADDICTION?

18 A. YES, I HAVE.

19 Q. BASED ON YOUR EXPERIENCE AND YOUR TRAINING AND
20 EXPERTISE, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
21 PREGNANT WOMEN FIND IT MORE OR LESS DIFFICULT THAN
22 NONPREGNANT WOMAN TO QUIT USING ADDICTING DRUGS?

23 MS. CHABER: I THINK IT'S VAGUE. I THINK IT'S
24 AMBIGUOUS AS TO WHAT DRUGS, WHICH PREGNANT WOMEN.
25 IT'S JUST SO OVERBROAD.
26 THE COURT: WHICH DRUGS ARE YOU TALKING ABOUT?
27 MR. FURR: I WILL NARROW THE QUESTION.
28 Q. DR. BECKSON, DO YOU HAVE AN OPINION AS TO WHETHER
5068

1 OR NOT PREGNANT WOMEN FIND IT MORE OR LESS DIFFICULT THAN
2 NONPREGNANT WOMEN TO STOP SMOKING?

3 A. I DO HAVE AN OPINION.

4 Q. AND WHAT IS YOUR OPINION?

5 A. IN TERMS OF DIFFICULTY -- THAT MAY NOT BE AN
6 APPROPRIATE WORD TO USE.

7 THE WAY I THINK OF IT IS PREGNANCY TURNS OUT TO
8 BE A WONDERFUL OPPORTUNITY TO FIND WOMEN WHOSE MOTIVATION TO
9 QUIT AND THEIR DECISION TO QUIT ARE MORE LIKELY, BECAUSE
10 THEY'RE NOT JUST THINKING ABOUT THEMSELVES; THEY ARE USUALLY
11 THINKING ABOUT THEIR UNBORN CHILD.

12 AND SO, IN FACT, THE RESEARCH SHOWS THAT THE QUIT
13 RATES IN PREGNANT WOMEN ARE GREATER THAN THE QUIT RATES IN
14 NONPREGNANT WOMEN OF THE SAME AGE BY ABOUT 25 PERCENT, TO 14
15 PERCENT.

16 AND SO IT'S CONSISTENT WITH WHAT YOU WOULD
17 EXPECT. THE PERSON HAS SOMETHING ELSE TO THINK ABOUT, AND
18 MAKES THEIR DECISION ACCORDINGLY.

19 Q. SIR, I WANT YOU TO ASSUME THAT THERE HAS BEEN
20 TESTIMONY IN THIS CASE THAT A SCIENTIFIC ARTICLE THAT
21 APPEARED IN A RECENT ISSUE OF THE JOURNAL OF THE AMERICAN
22 MEDICAL ASSOCIATION DEMONSTRATED THAT IT WAS HARDER --

23 MS. CHABER: OBJECTION, YOUR HONOR. THIS SOUNDS
24 DECIDEDLY LIKE HEARSAY TO ME.

25 THE COURT: IT DOES. YOU HAVEN'T FINISHED THE
26 QUESTION, SO I CAN'T BE SURE. IT STARTED OUT THAT WAY.

27 MR. FURR: IT'S TESTIMONY IN THIS CASE.

28 THE COURT: IF IT'S TESTIMONY IN THIS CASE, THEN
5069

1 WHY DON'T YOU ASK HIM TO ASSUME THERE HAS BEEN SOME
2 TESTIMONY IN THIS CASE TO THAT EFFECT.

3 MR. FURR: I THOUGHT THAT'S WHAT I DID.

4 THE COURT: I DIDN'T HEAR THAT. MAYBE YOU DID.

5 MR. FURR: Q. DOCTOR, I WANT YOU TO ASSUME --

6 THE COURT: ACTUALLY, THE SCREEN SHOWS THAT YOU
7 DID WHAT YOU JUST SAID YOU DID, BUT MISSED IT.

8 MS. CHABER: MY ARGUMENT IS NOT THAT THERE WAS
9 TESTIMONY IN A SIMILAR FASHION. ON CROSS-EXAMINATION, THERE
10 MAY WELL HAVE BEEN SOMETHING.

11 MR. FURR: OH, NO. WE ARE TALKING ABOUT DIRECT
12 EXAMINATION.

13 THE COURT: LET'S CUT THIS SHORT. JUST REPHRASE
14 THE QUESTION.

15 MR. FURR: I WANT TO BE CLEAR, YOUR HONOR, SO
16 YOU DO YOU UNDERSTAND. THIS IS TESTIMONY MS. CHABER
17 ELICITED ON DIRECT EXAMINATION FROM DR. RICHARDSON.

18 THE COURT: THEN YOU HAVE BOTH FOLLOWED THE
19 FORMAT WITHOUT OBJECTION FROM EACH OTHER, WHEN YOU SAY YOU
20 ASSUME THAT DR. RICHARDSON GAVE X TESTIMONY. YOU BOTH HAVE
21 BEEN DOING THAT WITHOUT OBJECTION.

22 SO IF YOU CAN REPHRASE IT AND GET TO THE SAME
23 PLACE DOING THAT, WHY DON'T YOU DO IT, BECAUSE I JUST WANT
24 TO MOVE FORWARD.

25 MR. FURR: Q. DR. BECKSON, I WANT YOU TO
26 ASSUME THAT THERE WAS TESTIMONY IN THIS CASE ON FEBRUARY
27 10TH BY DR. RICHARDSON THAT A RECENT ARTICLE HAD BEEN

28 PUBLISHED IN THE JOURNAL OF THE AMERICAN MEDICAL
5070
1 ASSOCIATION, WITHIN THE LAST TWO TO THREE WEEKS, THAT SHOWED
2 STATISTICALLY THAT PREGNANT WOMEN HAVE A MUCH HARDER TIME
3 QUITTING SMOKING THAN WOMEN IN GENERAL.

4 DO YOU UNDERSTAND THAT, SIR?

5 A. YES, I DO.

6 Q. SIR, DID YOU REVIEW A RECENT PUBLICATION FROM THE
7 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION THAT DEALT WITH
8 SMOKING QUIT RATES IN PREGNANT AND NONPREGNANT WOMEN?

9 A. ACTUALLY, I REVIEWED AN ARTICLE ON SPECIFICALLY
10 THE TOPIC OF HISTORICAL TRENDS IN QUIT RATES BETWEEN
11 PREGNANT VERSUS NONPREGNANT WOMEN OF THE SAME AGE THAT WAS
12 PUBLISHED IN JAMA, OR THE JOURNAL OF THE AMERICAN MEDICAL
13 ASSOCIATION, SOMETIME IN JANUARY OF THIS YEAR.

14 MR. FURR: THIS IS FOR THE JUDGE.

15 LET ME ASK YOU TO TAKE A LOOK AT WHAT WE HAVE
16 MARKED AS DEFENDANTS' 6293.

17 (DOCUMENT MORE PARTICULARLY
18 LISTED IN THE INDEX MARKED
19 FOR IDENTIFICATION DEFENDANTS'
20 EXHIBIT # 6293)

21 MR. FURR: Q. AND I ASK YOU WHETHER THAT'S A
22 COPY OF THE SCIENTIFIC ARTICLE THAT YOU JUST REFERRED TO
23 US?

24 A. YES, IT IS. AND IT'S FROM JANUARY 19TH OF THIS
25 YEAR.

26 Q. SIR, THAT ARTICLE IS ENTITLED "TRENDS IN
27 PREGNANCY SMOKING RATES IN THE UNITED STATES, 1987 TO 1996";
28 CORRECT, SIR?

5071
1 A. THAT'S CORRECT.

2 Q. AND DID YOU THAT ARTICLE INTO CONSIDERATION WHEN
3 YOU REACHED YOUR OPINION WITH RESPECT TO WHETHER PREGNANT
4 WOMEN HAVE A MORE DIFFICULT TIME QUITTING SMOKING THAN
5 NONPREGNANT WOMEN?

6 A. IT IS ONE OF THE ARTICLES WHICH I HAVE READ ON
7 THE SUBJECT, YES.

8 Q. OKAY. AND DO YOU FIND THAT ARTICLE TO BE
9 CONSISTENT WITH YOUR OPINION, DOCTOR?

10 A. ENTIRELY.

11 Q. LET ME ASK YOU TO KEEP THAT UP THERE, PLEASE.

12 DR. BECKSON, I ALSO WANT YOU TO ASSUME THAT DR.
13 BENOWITZ TESTIFIED IN THIS CASE THAT IF LESLIE WHITELEY HAD
14 MADE FOUR TO FIVE SERIOUS QUIT ATTEMPTS AT ANY POINT IN HER
15 LIFE, THAT IT IS LIKELY, AS A MATTER OF PROBABILITY, THAT
16 SHE WOULD HAVE BEEN ABLE TO QUIT SMOKING.

17 DO YOU UNDERSTAND?

18 A. WOULD YOU SAY THAT ONE MORE TIME, PLEASE.

19 Q. I WANT YOU TO ASSUME THAT DR. BENOWITZ TESTIFIED
20 IN THIS CASE THAT IF LESLIE WHITELEY HAD MADE FOUR TO FIVE
21 SERIOUS QUIT ATTEMPTS DURING THE COURSE OF HER LIFE, THAT AS
22 A MATTER OF PROBABILITY, SHE WOULD HAVE BEEN ABLE TO QUIT.

23 A. I UNDERSTAND THAT ASSUMPTION, YES.

24 Q. SIR, WOULD YOU AGREE WITH THAT STATEMENT?

25 A. WELL, THE REASON FOR MY CONFUSION IS THAT IT'S A
26 HYPOTHETICAL STATEMENT, WHEN IN FACT THE REALITY IS IT
27 REALLY TOOK ONE QUIT ATTEMPT, WHERE SHE WANTED TO QUIT FOR
28 HERSELF, OR TWO TOTAL QUIT ATTEMPTS.

5072
1 AND THIS IS HISTORICAL FACT. SO I'M UNCLEAR
2 ABOUT WHY THE HYPOTHETICAL ABOUT FOUR TO FIVE QUIT ATTEMPTS.
3 MR. FURR: THANK YOU.

4 MS. CHABER: I WOULD -- YOUR HONOR, I HAVE
5 FEELING YOU MIGHT NOT BE ABLE TO RULE. WERE YOU LISTENING?
6 THE COURT: I WAS LISTENING. I WAS GOING TO PUT
7 THIS DOCUMENT BACK IN THE FOLDER.
8 MS. CHABER: I WOULD MOVE TO STRIKE.
9 I DON'T THINK IT'S RESPONSIVE.
10 HE BASICALLY SAID, "YOU GAVE ME A HYPOTHETICAL
11 AND I DON'T LIKE IT."
12 THE COURT: I THINK IT WAS RESPONSIVE.
13 IF YOU WANT TO EXAMINE HIM FURTHER ABOUT IT, I
14 THINK IT'S GOING TO BE YOUR TURN IN ONE SECOND.
15 IS THAT THE OBJECTION?
16 MS. CHABER: YES.
17 THE COURT: OVERRULED.
18 WERE YOU DONE?
19 MR. FURR: I'M GOING TO TAKE MORE THAN ONE
20 SECOND. I'M ABOUT DONE.
21 THE COURT: I THOUGHT YOU WERE ABOUT DONE.
22 MR. FURR: Q. DR. BECKSON, DO YOU HAVE AN
23 OPINION AS TO WHETHER MRS. WHITELEY WAS ABLE TO CONTROL HER
24 SMOKING BEHAVIOR AND STOP SMOKING WHEN SHE CHOSE TO DO SO?
25 A. I THINK THERE'S EVIDENCE IN THE RECORD IN WHICH
26 SHE HERSELF STATES, WHEN SHE DECIDED TO QUIT IN 1998, THAT'S
27 IN FACT WHAT SHE DID. AND SHE DID IT WITHOUT ANY
28 PROFESSIONAL HELP, LIKE MOST SMOKERS, AND SUCCEEDED.

5073

1 AND APPARENTLY HASN'T SMOKED SINCE, AT LEAST
2 THROUGH THE TIME PERIOD LEADING UP TO HER DEPOSITION THAT I
3 REVIEWED.
4 MR. FURR: THANK YOU, DR. BECKSON. THOSE ARE
5 ALL THE QUESTIONS I HAVE.
6 THE COURT: OKAY.
7 DOES ANY OTHER DEFENSE LAWYER HAVE ANY
8 QUESTIONS?
9 MR. HARDY: NO, YOUR HONOR.
10 THE COURT: MS. CHABER.

11

12 CROSS-EXAMINATION
13 BY MS. CHABER: Q. GOOD AFTERNOON, DR.
14 BECKSON. I'M MADELYN CHABER.
15 WE HAVE NOT MET, HAVE WE?
16 A. NO, WE HAVEN'T. NICE TO MEET YOU. GOOD
17 AFTERNOON.

18 Q. LET ME SEE IF I UNDERSTAND THIS.
19 YOUR TESTIMONY IS, BASICALLY, THAT SMOKING IS AN
20 EASY THING TO DO, ANYBODY CAN DO IT. ALL YOU HAVE TO DO IS
21 BE MOTIVATED, AND THAT WHEN LESLIE WAS MOTIVATED, THAT'S
22 WHAT SHE DID, SHE QUIT SMOKING?
23 THE COURT: I THINK YOU MISSPOKE. YOU SAID
24 "SMOKING IS AN EASY THING TO DO."
25 DID YOU MEAN STOPPING SMOKING IN THE QUESTION?
26 MS. CHABER: THANK YOU, YOUR HONOR.
27 I GUESS I BETTER START THAT ONE OVER AGAIN. THAT
28 WAS WORDED POORLY.

5074

1 Q. IF I UNDERSTAND YOUR TESTIMONY CORRECTLY, YOU
2 THINK THAT SMOKING -- QUITTING SMOKING IS AN EASY THING TO
3 DO, THAT IT'S AN ADDICTION MAYBE IN SOME PEOPLE, BUT NOT IN
4 MOST PEOPLE, THAT IN LESLIE WHITELEY, IT WASN'T AN ADDICTION
5 AT ALL, AND SHE COULD HAVE QUIT ANYTIME; ALL SHE HAD TO DO
6 WAS REALLY WANT TO.
7 IS THAT A FAIR SUMMARY OF YOUR TESTIMONY?
8 MR. FURR: EXCUSE ME, YOUR HONOR. I ONLY OBJECT

9 BECAUSE IT'S COMPOUND.
10 THE COURT: IT IS.
11 MS. CHABER: Q. DOCTOR, HAS IT BEEN YOUR
12 TESTIMONY THAT QUITTING SMOKING IS AN EASY THING TO DO?
13 A. NOT AT ALL.
14 Q. OKAY.
15 A. THAT HAS NOT BEEN MY TESTIMONY.
16 Q. ALL RIGHT. FINE.
17 A. I THINK WHAT YOU WERE REFERRING TO WAS THE FACT
18 THAT THE BEGINNING OF THE EFFORT TO QUIT SMOKING ALWAYS
19 BEGINS WITH A CONSCIOUS DECISION OF THE PERSON TO WANT TO
20 QUIT. THAT WAS MY TESTIMONY.
21 Q. WELL, IF I UNDERSTOOD YOU CORRECTLY, NO MATTER
22 WHAT THE DRUG IS, WHETHER IT'S HEROIN, WHETHER IT'S COCAINE,
23 WHERE IT'S NICOTINE IN CIGARETTES, THAT ALL IT TAKES IS
24 CORRECT MOTIVATION AND PEOPLE CAN QUIT.
25 IS THAT YOUR TESTIMONY?
26 A. I'M SORRY, MS. CHABER, BUT IT'S NOT MY TESTIMONY
27 AND I BELIEVE YOU DIDN'T UNDERSTAND WHAT I WAS SAYING.
28 I WAS TALKING ABOUT THE FACT THAT, REGARDLESS OF
5075
1 THE ADDICTION, THE FIRST STEP, THE NECESSARY STEP, NOT THE
2 SUFFICIENT STEP -- THE DIFFERENCE BETWEEN NECESSARY AND
3 SUFFICIENT -- THE FIRST NECESSARY STEP TO STOPPING ANY
4 ADDICTION IS THE CONSCIOUS DECISION TO STOP.
5 WHAT FOLLOWS IS QUITE A DIFFICULT PROCESS, I CAN
6 ASSURE YOU, DEPENDING ON THE PERSON, THE SUBSTANCE, AND THE
7 CIRCUMSTANCES.
8 Q. OKAY. SO IF I UNDERSTOOD WHAT YOU JUST SAID,
9 WHICH WAS A CORRECTION OF MY MISSTATEMENT OR
10 MISCHARACTERIZATION OF YOUR EARLIER STATEMENTS, THAT'S
11 MERELY THE FIRST STEP.
12 BUT THEN THERE ARE OTHER FACTORS THAT COME INTO
13 PLAY; CORRECT?
14 A. THE MOST IMPORTANT FACTOR --
15 Q. COULD WE TRY "YES" OR "NO," AND THEN IF I WANT TO
16 KNOW WHAT YOU THINK IS THE MOST IMPORTANT, I WILL LET YOU
17 EXPLAIN YOUR ANSWER.
18 THE COURT: JUST A SECOND. IF THE QUESTION IS
19 SUSCEPTIBLE TO A "YES" OR "NO," YOU CAN GIVE A "YES" OR "NO"
20 AND THEN EXPLAIN.
21 AND IF IT'S NOT SUSCEPTIBLE TO A "YES" OR "NO,"
22 YOU CAN TELL US WHY NOT.
23 MS. CHABER: OKAY. THANK YOU, YOUR HONOR.
24 COULD I HAVE THE QUESTION READ BACK SO WE KNOW
25 WHAT QUESTION WE ARE ANSWERING.
26 THE COURT: DEFINITELY.
27 (RECORD READ)
28 THE WITNESS: I WOULD HAVE TO SAY YES, THAT IS
5076
1 THE FIRST STEP. AND THEN THERE ARE OTHER ISSUES THAT
2 FOLLOW, CORRECT.
3 MS. CHABER: Q. OKAY. AND NOW, LET ME JUST
4 UNDERSTAND SOMETHING.
5 YOU ARE NOT LESLIE WHITELEY'S OBSTETRICIAN AND
6 GYNECOLOGIST.
7 YOU'RE A PSYCHIATRIST; CORRECT?
8 A. AS FAR AS I KNOW.
9 Q. AND WOMEN WHO WANT TO HAVE BABIES DON'T GENERALLY
10 COME TO YOU ABOUT HAVING THEIR CHILDREN, DO THEY?
11 I MEAN, IT'S A FAIRLY OBVIOUS QUESTION, BUT I
12 JUST WANT TO MAKE SURE WE ARE IN THE SAME PLACE.
13 A. ARE YOU TALKING ABOUT ADDICTIVE WOMEN OR WOMEN

14 WHO ARE PREGNANT IN GENERAL?
15 Q. LET'S TALK ABOUT WOMEN, ALL WOMEN.
16 DO WOMEN COME TO YOU, SIR, TO GET PREGNANT OR TO
17 HAVE THEIR CHILDREN DELIVERED?
18 A. MY WIFE CAME TO ME TO GET PREGNANT.
19 Q. WELL, THAT WAS A FAIR ONE.
20 MR. BROWN: HOW DID SHE DO?
21 MS. CHABER: Q. IT'S LATE IN THE DAY. I'M NOT
22 GOING TO ASK YOU HOW MANY KIDS YOU HAVE, TO FOLLOW UP ON
23 THAT. FAIR ENOUGH. YOU GOT ME ON THAT.
24 BUT OTHER THAN YOUR WIFE. AND WE WON'T GO ANY
25 FURTHER. I WON'T ASK YOU ABOUT ANYBODY ELSE.
26 A. I APPRECIATE THAT.
27 Q. OKAY. IT'S A FAIR STATEMENT, IS IT NOT, THAT YOU
28 ARE NOT THE PERSON THAT WOMEN IN GENERAL, OTHER THAN YOUR
5077
1 WIFE, COME TO TO GET PREGNANT, TO BE CARED FOR DURING THEIR
2 PREGNANCY, FOR THEIR PREGNANCY, AND THEN TO HAVE THEIR CHILD
3 DELIVERED?
4 A. THAT WOULD BE A FAIR STATEMENT, YES.
5 Q. AND HAVING GONE THROUGH IT, AT LEAST FROM
6 THE FATHER'S END OF THINGS, WHICH SOMETIMES IS VERY
7 DIFFERENT -- BUT MAYBE YOU'RE A VERY ENLIGHTENED MAN.
8 A. I APPRECIATE YOUR CONFIDENCE.
9 Q. -- WOMEN TEND TO GO, IF THEY'RE COMPLIANT
10 PATIENTS, TO THEIR OBSTETRICIAN AND GYNECOLOGIST ON A
11 REGULAR BASIS FOR REGULAR APPOINTMENTS FOR AT LEAST A
12 NINE-MONTH PERIOD; CORRECT?
13 A. THAT'S OPTIMAL PRENATAL CARE, YES.
14 Q. AND ASSUMING THAT MS. WHITELEY'S OBSTETRICIAN
15 AND GYNECOLOGIST CAME AND SAID THAT MS. WHITELEY WAS A
16 COMPLIANT PATIENT AND SHE FOLLOWED -- WHAT DID YOU CALL
17 IT, OPTIMAL --
18 A. OPTIMAL PRENATAL CARE.
19 Q. -- OPTIMAL PRENATAL CARE, YOU WOULD HAVE NO OTHER
20 OPINIONS ABOUT THAT RELATIVE TO MS. WHITELEY? IN OTHER
21 WORDS, WOULD YOU DEFER TO HER OBSTETRICIAN IN TERMS OF
22 WHETHER OR NOT SHE WAS A COMPLIANT PATIENT, WHO COMPLIED
23 WITH OPTIMAL PRENATAL CARE?
24 A. MY UNDERSTANDING IS THAT DR. RICHARDSON SAID THAT
25 WITH THE EXCEPTION OF STOPPING SMOKING, SHE OTHERWISE
26 COMPLIED WITH ALL OF HIS RECOMMENDATIONS.
27 Q. AND I'D LIKE YOU TO ASSUME THAT DR. RICHARDSON,
28 WHO SAW MS. WHITELEY FOR AT LEAST NINE MONTHS FOR AT LEAST
5078
1 FOUR-YEAR TIME PERIODS, AND PRESUMABLY IN BETWEEN AS WELL,
2 CAME INTO THIS COURT AND TESTIFIED THAT MS. WHITELEY WAS
3 ADDICTED TO SMOKING.
4 CAN YOU MAKE THAT ASSUMPTION, SIR?
5 A. I CAN MAKE THAT ASSUMPTION.
6 Q. OKAY. HOWEVER, YOU REJECT THAT STATEMENT, THAT
7 MS. WHITELEY WAS ADDICTED; CORRECT?
8 A. YES. AS AN ADDICTION PSYCHIATRIST, I DO. THAT'S
9 WHAT I DO. I DON'T DELIVER BABIES.
10 Q. AND IN TERMS OF THE TIME PERIOD THAT A WOMAN IS
11 GOING TO HER DOCTOR, IN TERMS OF DELIVERY OF HER BABY, IN
12 TERMS OF CARE OF HER BABY, YOU WOULD AGREE THAT A PHYSICIAN
13 MIGHT HAVE A SIGNIFICANT AMOUNT OF TIME TO OBSERVE A PERSON,
14 BOTH AS A PERSON, AS A PATIENT AND AS A MOTHER? WOULD YOU
15 AGREE WITH THAT STATEMENT?
16 A. I WILL GO ALONG WITH THAT, YES.
17 Q. AND, SIR, IF I UNDERSTAND DR. RICHARDSON'S
18 STATEMENT AND WHAT YOUR LITTLE CLARIFICATION WAS,

19 MS. WHITELEY WAS ABLE TO DO EVERYTHING THAT HE ASKED HER TO
20 DO EXCEPT TO QUIT SMOKING; CORRECT?
21 A. CORRECT.
22 Q. AND HIS EVALUATION OF THE WOMAN THAT HE CARED FOR
23 OVER FOUR YEARS AND POTENTIALLY LONGER THAN THAT WAS THAT
24 SHE WAS ADDICTED --
25 MR. FURR: EXCUSE ME, YOUR HONOR. CONCERNING
26 THIS SUBJECT, WE MAY BE GETTING INTO A LEGAL ISSUE THAT WE
27 DISCUSSED EARLIER.
28 THE COURT: I BELIEVE --
5079
1 MS. CHABER: I'M NOT GOING THERE, YOUR HONOR.
2 MR. FURR: I THINK WE'RE THERE, YOUR HONOR.
3 THE COURT: YOU ARE NOT OBJECTING, ARE YOU?
4 MR. FURR: I AM OBJECTING.
5 AND I'M POINTING OUT TO THE COURT WHAT WAS GOING
6 ON.
7 MS. CHABER: WE NEED TO HAVE A SIDEBAR, IF
8 THERE'S GOING TO BE SOME --
9 THE COURT: I DON'T SEE THAT THIS QUESTION WAS
10 ANY DIFFERENT THAN WHAT HE'S ALREADY BEEN ASKED WITHOUT
11 OBJECTION ABOUT 10 SECONDS AGO, AND GAVE AN ANSWER TO IT.
12 I THINK THIS IS REPETITIVE, SOMETHING THAT'S
13 ALREADY IN THIS RECORD.
14 BUT IF YOU WANT A SIDEBAR, WE CAN HAVE ONE.
15 MR. FURR: I DO. I DO.
16 THE COURT: ALL RIGHT.
17 (COURT AND COUNSEL CONFER OUTSIDE
18 THE PRESENCE OF THE JURY)
19 THE COURT: FOR THE RECORD, ON THE LAST
20 QUESTION --
21 MS. CHABER: I WILL WITHDRAW ON THE BASIS OF IT
22 BEING CUMULATIVE.
23 THE COURT: OKAY.
24 MS. CHABER: Q. DOCTOR, IF I UNDERSTAND
25 CORRECTLY, YOU WENT THROUGH THE DSM-IV CRITERIA, AND YOU
26 FOUND THAT LESLIE WHITELEY DIDN'T MEET ENOUGH OF IT FOR YOU
27 TO DETERMINE THAT SHE WAS ADDICTED; IS THAT CORRECT?
28 A. YES, I DID NOT FIND THAT SHE MET CRITERIA FOR
5080
1 DSM-IV NICOTINE DEPENDENCE, CORRECT.
2 Q. YOU KNOW, SIR, USING THE DSM-IV ALL THE TIME,
3 THAT THE DSM-IV HAS A SEPARATE SECTION THAT RELATES TO
4 NICOTINE DEPENDENCE THAT IS SEPARATE FROM THAT LIST THAT YOU
5 JUST PUT UP THERE; CORRECT?
6 A. LIKE EVERY SUBSTANCE, THERE ARE THE CRITERIA FOR
7 SUBSTANCE DEPENDENCE, AND THEN THERE ARE ADDITIONAL SECTIONS
8 THAT REFLECT CHARACTERISTICS OF THE DRUG.
9 FOR EXAMPLE, WITH NICOTINE, THERE IS A SEPARATE
10 DIAGNOSIS FOR NICOTINE WITHDRAWAL, WHICH WE REFERRED TO
11 EARLIER.
12 Q. AND, SIR, DOESN'T THAT SEPARATE SECTION ALSO SAY
13 THAT IT CANNOT APPLY CERTAIN OF THESE HARD-AND-FAST RULES TO
14 NICOTINE?
15 A. WHAT THAT SECTION DOES SAY IN FACT IS THAT, WHILE
16 NICOTINE, LIKE EVERY SUBSTANCE, HAS ITS PARTICULAR
17 CHARACTERISTICS, AND IN THE CASE OF NICOTINE, CERTAIN OF THE
18 CRITERIA ARE GENERALLY NOT SEEN, SUCH AS THE ONE WE TALKED
19 ABOUT EARLIER, THAT THAT BEING THE CASE, YOU STILL USE THE
20 SAME CRITERIA FOR EVERY DRUG THAT'S CONSIDERED ADDICTIVE.
21 AND SO WHAT THAT MEANS WITH NICOTINE IS THAT,
22 MOST OF THE TIME, YOU ARE REALLY TRYING TO GET THREE OUT OF
23 SIX INSTEAD OF THREE OUT OF SEVEN, FOR EXAMPLE.

24 Q. SIR, DOESN'T THIS SECTION ON NICOTINE DEPENDENCE
25 SAY THAT "SOME OF THE GENERIC DEPENDENCE CRITERIA DO NOT
26 APPEAR TO APPLY TO NICOTINE, WHEREAS OTHERS REQUIRE FURTHER
27 EXPLANATION"?

28 MR. FURR: EXCUSE ME. CAN WE SHOW THE DOCUMENT
5081 TO THE WITNESS?

2 THE COURT: SURE.

3 MS. CHABER: FOR THE RECORD, IT'S MARKED AS
4 PLAINTIFFS' 1822.

5 Q. LET ME READ IT TO YOU AGAIN, DOCTOR, AND TELL ME
6 IF I HAVE READ IT CORRECTLY.

7 "SOME OF THE GENERIC DEPENDENCE CRITERIA DO NOT
8 APPEAR TO APPLY TO NICOTINE, WHEREAS OTHERS
9 REQUIRE FURTHER EXPLANATION."

10 DID I READ THAT CORRECTLY?

11 A. YES, YOU DID.

12 Q. AND, SIR, TOLERANCE TO NICOTINE IS DISCUSSED IN
13 THIS SECTION, IS IT NOT?

14 A. YES, IT IS.

15 Q. AND, SIR, YOU UNDERSTAND THAT WHEN PEOPLE START
16 SMOKING CIGARETTES, THE FIRST CIGARETTE IS GENERALLY A
17 NOXIOUS EXPERIENCE; IN OTHER WORDS, IT MAKES PEOPLE SICK,
18 THEY GET NAUSEOUS, THEY THROW UP, FEEL LIKE THEY'RE GOING
19 TO, THINGS LIKE THAT? DO YOU UNDERSTAND THAT TO BE THE
20 CASE?

21 A. YES. THERE ARE SIDE EFFECTS TO SMOKING
22 CIGARETTES.

23 Q. I'M TALKING ABOUT THE FIRST CIGARETTE, SIR.

24 A. YES, THERE ARE SIDE EFFECTS TO SMOKING A
25 CIGARETTE IN WHICH THERE IS NICOTINE.

26 THOSE SIDE EFFECTS ARE EXACTLY THE SYMPTOMS OF
27 NAUSEA THAT YOU'RE REFERRING TO.

28 Q. AND, SIR, DIZZINESS, ANOTHER ONE OF THOSE
5082

1 SYMPTOMS, RELATED TO -- AT LEAST ACCORDING TO THIS SECTION
2 OF THE DSM-IV ON NICOTINE DEPENDENCE, RELATED TO TOLERANCE?

3 A. YES, BUT I NEED TO EXPLAIN SOMETHING. FOR EVERY
4 DRUG AND EVERY MEDICATION, THERE ARE TWO EFFECTS. THERE IS
5 THE EFFECT THAT YOU'RE LOOKING FOR, THE THERAPEUTIC EFFECT,
6 HOW THE MEDICATION HELPS YOU OR HOW THE DRUG GETS YOU HIGH.
7 THE SIDE EFFECTS ARE THE UNWANTED EFFECTS.

8 SO I'M JUST CLARIFYING THAT THESE ARE SIDE
9 EFFECTS OF TAKING IN NICOTINE AND A DRUG INTO THE BODY.

10 AND YES, THERE IS TOLERANCE FROM THE FIRST
11 CIGARETTE TO THESE UNWANTED SIDE EFFECTS, CORRECT.

12 Q. AND THEN, SIR, PEOPLE START SMOKING, GRADUALLY
13 WORK UP TO GREATER AND GREATER AMOUNTS OF SMOKING, UNTIL
14 THEY REACH A DOSE-SUSTAINING LEVEL; ISN'T THAT TRUE?

15 A. THAT'S THE USUAL PROGRESSION FOR CIGARETTE
16 SMOKING.

17 Q. AND, SIR, WHEN PEOPLE SWITCH FROM SMOKING REGULAR
18 CIGARETTES TO SMOKING LOWER TAR AND NICOTINE CIGARETTES,
19 THEY OFTEN INCREASE THE AMOUNT OF SMOKING THAT THEY DO IN
20 ORDER TO GET SUFFICIENT NICOTINE; ISN'T THAT TRUE?

21 A. THAT'S TRUE. BUT THAT ACTUALLY HAS NOTHING TO DO
22 WITH TOLERANCE. THAT HAS TO DO WITH THE FACT THAT THERE IS
23 LESS NICOTINE IN LOW-TAR, LOW-NICOTINE CIGARETTES.

24 SO THEY'RE ACTUALLY CONTINUING WITH SMOKING THE
25 SAME AMOUNT. IT'S NOT THE FACT THAT THEY'RE GETTING LESS
26 EFFECT FOR THE SAME AMOUNT OF DRUG. THEY'RE GETTING LESS
27 DRUG, WHICH IS WHY THEY SMOKE MORE TO GET THE SAME AMOUNT OF
28 DRUG THAT THEY WERE DOING BEFORE.

5083

1 Q. AND, SIR, DO YOU KNOW HOW MANY CIGARETTES IN A
2 NORMAL 12-HOUR DAY SOMEONE WOULD HAVE TO SMOKE IN ORDER TO
3 BE CONSTANTLY INCREASING THEIR CIGARETTE CONSUMPTION?

4 MR. FURR: OBJECTION. VAGUE.

5 MS. CHABER: YES. IT WAS POORLY STATED.

6 Q. AT SOME POINT IN TIME, SIR, WOULD YOU AGREE THAT
7 ONE CANNOT CONTINUE TO TAKE IN AMOUNTS OF NICOTINE, ONE,
8 PARTLY BECAUSE THERE AREN'T ENOUGH HOURS IN THE DAY TO GET
9 HIGHER AND HIGHER DOSES --

10 MR. FURR: OBJECTION. VAGUE.

11 MS. CHABER: Q. -- CORRECT?

12 THE COURT: LET ME ASK THE WITNESS: DO YOU
13 UNDERSTAND THE QUESTION?

14 THE WITNESS: YES. I CAN RESPOND TO IT, IF
15 THAT'S WHAT YOU'RE ASKING.

16 THE COURT: IF YOU UNDERSTAND IT, GO AHEAD.

17 MS. CHABER: JUST BECAUSE NOBODY ELSE DOES, IT'S
18 ALL RIGHT.

19 THE WITNESS: I WILL PUT IT IN A WAY THAT'S
20 INTUITIVE, WHERE OBVIOUSLY, IF YOU ARE GOING TO USE A MODEL
21 LIKE HOW DO HEROIN ADDICTS INCREASE THE AMOUNT, THEY SHOOT
22 MORE AND MORE HEROIN EACH TIME THEY DO IT.

23 YOU CAN SMOKE THE WHOLE TIME. EACH TIME YOU
24 LIGHT UP, FOR EXAMPLE. SO IT HAS TO BE A MARKED INCREASE,
25 IF YOU ARE GOING TO USE THAT MODEL. YOU JUST SMOKE MORE
26 THAN ONE CIGARETTE AT A TIME.

27 MS. CHABER: Q. YOU PUT TWO, THREE, FOUR
28 CIGARETTES IN YOUR MOUTH; THAT'S THE WAY PEOPLE USUALLY

5084

1 SMOKE?

2 A. IF YOU WERE SMOKING ACCORDING TO THE TOLERANCE
3 MODEL THAT YOU SEE WITH HEROIN ADDICTS, THAT IS IN FACT WHAT
4 YOU WOULD BE SEEING.

5 UNFORTUNATELY, FOR HEROIN ADDICTS, THEY HAVE A
6 BIGGER PROBLEM WITH TOLERANCE. AND CIGARETTE SMOKERS, WHEN
7 THEY GET TO THEIR PLATEAU, TAKE IN THE SAME AMOUNT OF
8 NICOTINE FOR YEAR AFTER YEAR AFTER YEAR ON A DAILY BASIS,
9 AND THEY STAY THERE.

10 Q. AND, SIR, YOU UNDERSTAND THAT IF YOU TAKE IN TOO
11 MUCH NICOTINE, IT IS A POISON AND CAN KILL YOU?

12 A. THE LETHAL DOSE OF NICOTINE, WHICH IS NEVER
13 EXPERIENCED BY HUMAN BEINGS, IS RELATED TO THE AMOUNT THAT
14 PEOPLE TAKE FOR EFFECT. THAT'S CALLED YOUR THERAPEUTIC
15 INDEX. IT'S HOW HIGH OF A DOSE WILL KILL YOU AND HOW HIGH
16 ARE YOU DOING.

17 NOW, WITH NICOTINE, THERE'S A HUGE INDEX BETWEEN
18 THOSE TWO. WITH HEROIN, THEY GET TOLERANT, TOLERANT,
19 TOLERANT, TOLERANT, TOLERANT, TOLERANT UNTIL THEY OD.

20 THAT'S WHAT IS AN EVER DECREASING THERAPEUTIC
21 INDEX. BECAUSE OF THE TOLERANCE, IN ORDER TO GET HIGH, THEY
22 TAKE IN AN AMOUNT THAT CAUSES THEM TO STOP BREATHING.

23 AND THAT'S THE BASIS FOR A HEROIN OD.

24 Q. AND, SIR, LET ME ASK YOU, IN THIS COUNTRY EVERY
25 YEAR, HOW MANY PEOPLE DIE FROM HEROIN?

26 A. THE PERCENT OF THE AMERICAN POPULATION THAT IS
27 HEROIN-DEPENDENT IS LESS THAN 1 PERCENT OF THE POPULATION.

28 Q. HOW MANY PEOPLE IN A YEAR, SIR, DIE FROM HEROIN?

5085

1 A. PROBABLY SEVERAL THOUSAND PEOPLE. THAT'S MY
2 GUESS.

3 Q. AND HOW MANY PEOPLE IN A YEAR, SIR, DIE FROM
4 COCAINE?

5 A. AGAIN, COCAINE DEPENDENCE, CRACK DEPENDENCE TO BE
6 SPECIFIC, IS SEEN IN ONLY HALF A PERCENT OF THE POPULATION.
7 AND YOU ONLY GET A SMALL NUMBER OF PEOPLE DYING,
8 PROBABLY IN THE HUNDREDS.

9 Q. AND, SIR, HOW MANY PEOPLE IN A YEAR DIE FROM
10 USING MARIJUANA?

11 A. MARIJUANA IS A VERY WEAKLY ADDICTIVE SUBSTANCE
12 AND IT'S RELATIVELY BENIGN.

13 IT'S UNUSUAL TO FIND SOMEONE WHO MEETS DSM-IV
14 CRITERIA FOR MARIJUANA DEPENDENCE. AND SO IT'S PROBABLY A
15 VERY SMALL NUMBER WHO DIE FROM MARIJUANA.

16 Q. AND, SIR, OVER 400,000 PEOPLE DIE EVERY YEAR IN
17 THIS COUNTRY FROM SMOKING-RELATED DISEASE?

18 A. I DON'T KNOW THAT THAT'S CORRECT.

19 BUT I KNOW THAT'S WHAT I SEE ON A BILLBOARD ON
20 SANTA MONICA BOULEVARD EVERY DAY I DRIVE ON IT. SO I CAN
21 ACCEPT THAT AS BEING AN APPROXIMATE NUMBER, INCLUDING LUNG
22 CANCER, HEART DISEASES, AND SO FORTH.

23 Q. I MEAN, NICOTINE HAS AN EFFECT ON PEOPLE MORE
24 THAN JUST WITH RESPECT TO THE BRAIN; ISN'T THAT TRUE?

25 A. IT'S TRUE THAT THERE ARE HEALTH EFFECTS OF
26 SMOKING.

27 THE ISSUE IS WHAT'S A SOCIAL PATHOGEN? WHAT
28 DESTROYS THE FABRIC OF SOCIETY, AND WHAT IS KILLING PEOPLE
5086

1 FROM A PUBLIC HEALTH PERSPECTIVE?

2 Q. SIR, DEPENDING ON THE POPULATION STUDIED, FROM 55
3 TO 90 PERCENT OF INDIVIDUALS WITH OTHER MENTAL DISORDERS
4 SMOKE; IS THAT A FAIR STATEMENT, SIR?

5 A. THERE IS A VERY HIGH PERCENTAGE OF PEOPLE, IN MY
6 PRACTICE AND PSYCHIATRIC SETTINGS, WHO SMOKE. THAT IS A
7 FAIR STATEMENT.

8 Q. AND, SIR, ARE YOU AWARE OF A VERY RECENT ARTICLE
9 IN THE BRITISH JOURNAL OF MEDICINE --

10 A. THE BRITISH MEDICAL JOURNAL?

11 Q. EXCUSE ME. THE BRITISH MEDICAL JOURNAL.

12 MR. FURR: OBJECTION, YOUR HONOR.

13 MS. CHABER: I HADN'T FINISHED MY SENTENCE.

14 MR. FURR: I APOLOGIZE.

15 MS. CHABER: PLEASE. EVERYONE ELSE GETS YELLED
16 AT FOR GOING TOO FAST, AND NOW I'M GETTING YELLED AT FOR
17 GOING TOO SLOW.

18 Q. ARE YOU FAMILIAR WITH A RECENT ARTICLE IN THE
19 BRITISH MEDICAL JOURNAL RELATING TO DOCTORS BEING TAUGHT TO
20 TREAT NICOTINE ADDICTION AS A DISEASE?

21 A. I DON'T BELIEVE I'VE SEEN THAT PARTICULAR
22 ARTICLE.

23 Q. AND, SIR, I THINK YOU MADE REFERENCE TO THE
24 AMERICAN PSYCHIATRIC ASSOCIATION.

25 A. I'M A MEMBER OF IT.

26 Q. AND, SIR, HAVE YOU READ ANYTHING BY THE AMERICAN
27 PSYCHIATRIC ASSOCIATION THAT INDICATES THAT, FOR DIAGNOSING
28 NICOTINE DEPENDENCE, THE FAGERSTROM SCALE HAS BEEN PROVEN
5087

1 RELIABLE AND VALID?

2 A. I THINK I SEE YOU HAVE THE APA PRACTICE
3 GUIDELINES.

4 IS THAT WHAT YOU'RE READING FROM?

5 Q. I'M ASKING YOU A QUESTION, DOCTOR.

6 A. I CAN'T ANSWER YOUR QUESTION AS STATED.

7 WHAT I CAN TELL YOU IS THAT THE VALIDITY OF THE
8 FAGERSTROM QUESTIONNAIRE HAS BEEN STUDIED BY NUMEROUS PEOPLE
9 OVER THE YEARS.

10 Q. SIR, LET'S GO THROUGH THE FAGERSTROM CRITERIA.
11 AND LET ME JUST ASK YOU: DID I UNDERSTAND CORRECTLY THEN
12 THAT YOU DON'T RECALL A PUBLICATION OR A STATEMENT BY THE
13 AMERICAN PSYCHIATRIC ASSOCIATION TO THE EFFECT THAT, IN
14 DIAGNOSING NICOTINE DEPENDENCE, THE FAGERSTROM SCALE WAS
15 RELIABLE AND VALID?
16 A. NO. IN FACT, I HAVE DONE MY OWN LITERATURE
17 REVIEW OF THE FAGERSTROM TOLERANCE QUESTIONNAIRE, BEGINNING
18 WITH THE ORIGINAL PAPER MADE PUBLIC BY DOCTOR --
19 MS. CHABER: I MOVE --
20 THE WITNESS: I DON'T RECALL THAT STATEMENT.
21 MS. CHABER: I MOVE TO STRIKE, YOUR HONOR. I
22 ASKED SPECIFICALLY ABOUT THE AMERICAN PSYCHIATRIC
23 ASSOCIATION.
24 THE COURT: ALL HE SAID OF SUBSTANCE IN THAT, IS
25 WHAT HE DIDN'T DO.
26 I'LL STRIKE THE REFERENCE TO DOING HIS OWN
27 SEARCH, AND LEAVE IN THE LATTER PART OF THE ANSWER.
28 MS. CHABER: THANK YOU.

5088

1 THIS IS PART OF PLAINTIFFS' 1821, WHICH WERE
2 THREE CHARTS THAT WERE APPARENTLY MARKED WITH ONE EXHIBIT
3 NUMBER, WHICH I HADN'T THOUGHT WE WERE DOING, BUT APPARENTLY
4 WE DID.
5 Q. NOW, SIR, UNDER THE FAGERSTROM SCALE, THE FIRST
6 QUESTION THAT'S ASKED IS: "HOW SOON IN THE MORNING DOES ONE
7 HAVE A CIGARETTE?"
8 A. BEFORE WE GET ON, CAN I ASK YOU WHY IT IS WRITTEN
9 AS THE FAGERSTROM DEPENDENCE QUESTIONNAIRE WHEN THAT'S NOT
10 ACCURATE?
11 Q. SIR, I THINK THE QUESTIONS ARE SUPPOSED TO COME
12 FROM ME. AND I'M SURE MR. FURR WILL CLEAR THAT UP?
13 A. I'M JUST TRYING TO UNDERSTAND WHAT I'M LOOKING AT
14 HERE.
15 OKAY. YOU WANT ME TO TALK ABOUT THE FAGERSTROM
16 TOLERANCE QUESTIONNAIRE OR WHAT YOU HAVE WRITTEN THERE?
17 THAT'S MY QUESTION BEFORE I ANSWER.
18 Q. I WANT TO ASK YOU THE FOLLOWING QUESTION, SIR:
19 ISN'T IT TRUE THAT ON THE FAGERSTROM SCALE, WHATEVER WORDS
20 YOU PUT AFTER IT, THE FIRST QUESTION THAT'S ASKED IS: "HOW
21 SOON IN THE MORNING HOUSE AFTER YOU WAKE UP DO YOU SMOKE
22 YOUR FIRST CIGARETTE?"
23 A. THAT IS A QUESTION FROM THE FAGERSTROM TOLERANCE
24 QUESTIONNAIRE.
25 Q. WELL, SIR, YOU KNOW, YOU KEEP SAYING THAT TO ME,
26 BUT I'D LIKE TO SHOW YOU A DOCUMENT FROM THE AMERICAN
27 JOURNAL OF PSYCHIATRY FROM THE OCTOBER 1996 SUPPLEMENT,
28 WHICH I BELIEVE YOU SUPPLIED TO MY OFFICE, CORRECT?

5089

1 A. YOU MAY HAVE. IT WAS ONE OF THE DOCUMENTS I
2 CONSULTED.
3 Q. AND SIR, LET ME JUST SHOW YOU PAGE 4, AND DIRECT
4 YOUR ATTENTION TO TABLE 3.
5 AND CAN YOU READ ALONG SILENTLY WHILE I READ IT
6 ALOUD, AND THEN YOU TELL ME IF I READ IT CORRECTLY.
7 MR. FURR: EXCUSE ME. ARE WE GOING TO MARK
8 THIS?
9 THE COURT: WE ARE IF YOU ARE GOING TO READ FROM
10 IT.
11 MS. CHABER: YES, I CERTAINLY WILL.
12 MARK THIS AS PLAINTIFFS' NEXT IN ORDER.
13 THE CLERK: PLAINTIFFS' 1945.
14 MS. CHABER: HERE IS A THREE-HOLE PUNCHED COPY

15 FOR YOU, YOUR HONOR.
16 THE COURT: THANK YOU.
17 (DOCUMENT MORE PARTICULARLY
18 LISTED IN THE INDEX MARKED
19 FOR IDENTIFICATION PLAINTIFFS'
20 EXHIBIT # 1945)
21 MS. CHABER: Q. SIR, COULD YOU FOLLOW ALONG
22 WITH ME TO THE TITLE OF TABLE 3. SIR, TELL ME IF I'VE READ
23 THIS CORRECTLY. "ITEMS AND SCORING FOR FAGERSTROM TEST FOR
24 NICOTINE DEPENDENCE."
25 DID I READ THAT CORRECTLY, SIR?
26 A. YOU READ IT CORRECTLY.
27 Q. NOW, IS THE FIRST QUESTION UNDER THE FAGERSTROM
28 TEST FOR NICOTINE DEPENDENCE: "HOW SOON AFTER YOU WAKE UP
5090 DO YOU SMOKE YOUR FIRST CIGARETTE"?
2 A. THAT'S CORRECT.
3 Q. AND YOU GET A CERTAIN NUMBER OF POINTS, DEPENDING
4 ON WHAT THE ANSWER IS; CORRECT?
5 A. THAT'S TRUE.
6 Q. WITHIN FIVE MINUTES GETS THREE POINTS?
7 A. THAT'S CORRECT.
8 Q. SIX TO 30 MINUTES GETS TWO POINTS?
9 A. THAT'S IS TRUE.
10 Q. 31 TO 60 MINUTES GETS ONE POINT?
11 A. THAT'S CORRECT.
12 Q. AND IF YOU WAIT MORE THAN AN HOUR TO HAVE YOUR
13 FIRST CIGARETTE IN THE MORNING, YOU DON'T GET ANY POINTS FOR
14 THAT ONE?
15 A. THAT'S TRUE.
16 Q. NOW, SIR, YOU STUDIED CAREFULLY MS. WHITELEY'S
17 DEPOSITION. I THINK YOU EVEN SAID YOU WATCHED THE VIDEOTAPE
18 OF HER.
19 HOW SOON IN THE MORNING, SIR, DID MS. WHITELEY
20 HAVE HER FIRST CIGARETTE?
21 A. WELL, I RECALL SOMETHING AROUND AS SOON AS SHE
22 GOT UP.
23 AND IF YOU ARE GOING TO MAKE THAT WITHIN FIVE
24 MINUTES, YOU WOULD GIVE HER THREE POINTS TOWARD BEING
25 PHYSICALLY DEPENDENT ON NICOTINE.
26 Q. LET'S GO TO THE SECOND QUESTION, SIR.
27 "DO YOU FIND IT DIFFICULT TO REFRAIN FROM
28 SMOKING IN PLACES WHERE IT IS FORBIDDEN; FOR EXAMPLE, IN,
5091 CHURCH, AT THE LIBRARY, IN THE CINEMA, ETCETERA?"
2 DO YOU SEE THAT AS THE SECOND QUESTION, SIR?
3 A. YES, I DO.
4 Q. AND A "YES" ANSWER IS A ONE AND A "NO" ANSWER
5 GETS A ZERO; CORRECT?
6 A. THAT'S TRUE.
7 Q. SIR, FROM YOUR CAREFUL ANALYSIS OF MS. WHITELEY'S
8 DEPOSITION, CAN YOU TELL ME WHETHER MS. WHITELEY EVER HAD TO
9 LEAVE A THEATER, CHURCH OR SOME OTHER PLACE IN ORDER TO GO
10 HAVE A CIGARETTE?
11 A. ACTUALLY, I DON'T RECALL HER HAVING TO LEAVE.
12 I REMEMBER SHE SAID THAT SHE WOULD BE ANTSY
13 DURING THE SERMON AND WOULD HAVE A CIGARETTE AS SOON AS THE
14 SERMON WAS OVER AT CHURCH.
15 Q. REMEMBER HER SAYING THAT SHE WOULD AVOID GOING TO
16 MOVIE THEATERS RATHER GO TO A DRIVE-IN WHERE SHE COULD
17 SMOKE?
18 A. I DO REMEMBER HER GOING TO THE DRIVE-IN.
19 Q. AND DO YOU REMEMBER HER TALKING ABOUT HAVING TO

20 LEAVE CERTAIN PLACES, LIKE HER CHILDREN'S SCHOOL GROUNDS, IN
21 ORDER TO GO HAVE A CIGARETTE?

22 A. THAT I HONESTLY DON'T RECALL.

23 Q. NOW, SIR, THE NO. 3 IS: "WHICH CIGARETTE WOULD
24 YOU HATE MOST TO GIVE UP?"

25 AND YOU GET ONE POINT FOR THE FIRST ONE IN THE
26 MORNING AND YOU GET ZERO FOR ALL OTHERS.

27 SIR, FROM YOUR CAREFUL ANALYSIS OF MS. WHITELEY'S
28 DEPOSITION, WHAT CIGARETTE DID MS. WHITELEY SAY THAT SHE

5092

1 WOULD HATE TO GIVE UP MOST?

2 A. I BELIEVE IT WAS HER FIRST CIGARETTE IN THE
3 MORNING, GIVING ANOTHER POINT TOWARD PHYSICAL DEPENDENCE ON
4 NICOTINE.

5 Q. AND, SIR, IN NUMBER 4: "HOW MANY CIGARETTES A
6 DAY DO YOU SMOKE?"

7 AND YOU SEE IT SAYS IF YOU SMOKE 10 OR 11, YOU
8 DON'T GET ANY POINTS; DO YOU SEE THAT?

9 A. I SEE THAT.

10 Q. 11 TO 20, YOU GET ONE?

11 A. THAT'S WHAT IT SAYS, YES.

12 Q. 21 TO 30 YOU GET TWO?

13 A. CORRECT.

14 Q. AND 31 OR MORE, YOU GET THREE?

15 A. CORRECT.

16 Q. HOW MANY CIGARETTES A DAY ON AVERAGE DID
17 MS. WHITELEY SMOKE?

18 A. WELL, FROM MY REVIEW OF THE MATERIAL, IT WAS
19 ABOUT A PACK A DAY, 20 CIGARETTES.

20 Q. AND, SIR, FROM YOUR REVIEW OF THE DEPOSITION
21 TESTIMONY, DID YOU SEE TESTIMONY FROM MS. WHITELEY THAT,
22 WHEN SHE SWITCHED TO LOW-TAR CIGARETTES, SHE INCREASED HER
23 CONSUMPTION FROM ONE PACK A DAY TO ONE AND A HALF PACKS A
24 DAY?

25 A. THAT WOULDN'T BE SURPRISING. SO THAT LEAVES YOU
26 WITH THE FACT THAT IT'S A TOUGH QUESTION TO ANSWER.

27 IT DEPENDS ON WHETHER SHE IS SMOKING THE LOWER OR
28 HIGHER NICOTINE CIGARETTE, BUT I CAN ACCEPT THAT.

5093

1 Q. NOW, I'M CONFUSED.

2 WHAT DID YOU ACCEPT, THAT SHE INCREASED IT TO ONE
3 AND A HALF PACKS OF CIGARETTES A DAY?

4 A. WHILE SHE WAS SMOKING LOW-TAR, I HAVE ACCEPTED
5 THAT THAT WOULD BE REASONABLE TO ASSUME.

6 Q. RIGHT. AND SIR, YOU UNDERSTAND THAT NOT ONLY DO
7 PEOPLE INCREASE THEIR CONSUMPTION OF LOW-TAR CIGARETTES, BUT
8 THERE ARE OTHER MEANS OF COMPENSATING FOR MISSED NICOTINE,
9 SUCH AS BLOCKING VENT HOLES OR PUFFING DEEPER OR PUFFING
10 MORE FREQUENTLY? YOU KNOW THAT SIR, DON'T YOU?

11 A. I'VE READ ABOUT THAT, ALTHOUGH IT DOESN'T APPLY
12 TO THIS CRITERION.

13 Q. NOW, SIR, NO. 5 IS: "DO YOU SMOKE MORE
14 FREQUENTLY DURING THE FIRST HOURS OF WAKING THAN DURING THE
15 REST OF THE DAY?"

16 AND A "YES" IS A ONE AND A "NO" IS A TWO?

17 A. THAT'S CORRECT.

18 Q. AND CAN YOU TELL ME WHAT MS. WHITELEY SAID WAS
19 THE FREQUENCY OF HER SMOKING?

20 A. LIKE MOST PEOPLE WHO SMOKE CIGARETTES, SHE TENDED
21 TO SMOKE MORE FREQUENTLY IN THE MORNING THAN LATER ON IN THE
22 DAY.

23 Q. SO SHE GETS A POINT?

24 A. THAT'S CORRECT.

25 Q. AND DO YOU SEE NO. 6: "DO YOU SMOKE IF YOU ARE
26 SO ILL THAT YOU ARE IN BED MOST OF THE DAY"?
27 A. I DO SEE THAT, YES.
28 Q. AND A "YES" IS A ONE AND A "NO" IS A ZERO?
5094
1 A. THAT'S CORRECT.
2 Q. DID YOU SEE MS. WHITELEY SAY THAT, EVEN WHEN SHE
3 HAD COLDS OR BRONCHITIS, WITH THE EXCEPTION OF THE LAST TIME
4 THAT SHE HAD BRONCHITIS, THAT SHE WOULD CONTINUE TO SMOKE
5 CIGARETTES?
6 A. I DID SEE THAT IN HER DEPOSITION, YES.
7 Q. SO SHE'D GET ANOTHER POINT THERE?
8 A. CORRECT.
9 Q. AND, SIR, OF COURSE, IN ORDER TO BE
10 NICOTINE-DEPENDENT, ONE WOULD HAVE TO INHALE CIGARETTES,
11 WOULDNT'T THEY?
12 A. AS FAR AS CIGARETTE SMOKING, YES.
13 Q. THERE IS SMOKELESS TOBACCO. YOU CAN BECOME
14 DEPENDENT ON THE NICOTINE OF THAT.
15 A. YOU HAVE TO TAKE THE CIGARETTE SMOKE INTO YOUR
16 LUNGS TO GET THE NICOTINE LEVELS IN YOUR BLOOD, CORRECT.
17 Q. AND, SIR, AT LEAST UNDER THE ITEMS AND SCORING
18 FOR THE FAGERSTROM TEST FOR NICOTINE DEPENDENCE,
19 MS. WHITELEY FITS THE MODEL OF NICOTINE DEPENDENCE AS SET
20 FORTH IN THAT TABLE THAT WE JUST READ?
21 A. I THINK YOU HAVE CLEARLY DEMONSTRATED THAT
22 MS. WHITELEY WAS PHYSICALLY DEPENDENT, WHICH IS WHAT THE
23 FAGERSTROM TEST IS ABOUT.
24 AND WHAT THAT AMOUNTS TO IS MY STATEMENT BEFORE
25 THAT SHE HAD WITHDRAWAL WHEN SHE DIDN'T SMOKE. THAT'S
26 REALLY ALL IT AMOUNTS TO.
27 Q. SIR, WOULD YOU AGREE THAT, UNDER THE FAGERSTROM
28 TEST FOR NICOTINE DEPENDENCE, MS. WHITELEY FITS THE CRITERIA
5095
1 FOR NICOTINE DEPENDENCE?
2 A. AS FAR AS THE CRITERIA FOR NICOTINE DEPENDENCE,
3 SHE MEETS THE CRITERIA FOR NICOTINE PHYSICAL DEPENDENCE, NOT
4 DEPENDENCE IN TERMS OF ADDICTION.
5 Q. NOW, SIR, YOU AGREE THAT NICOTINE, AS DELIVERED
6 BY A CIGARETTE, GETS TO THE BRAIN WITHIN EIGHT TO 10
7 SECONDS?
8 A. THAT IS CORRECT.
9 Q. AND, SIR, YOU'D AGREE THAT NICOTINE AS DELIVERED
10 THROUGH NICOTINE GUM DOES NOT HAVE THAT SAME KIND OF QUICK
11 GETTING TO THE BRAIN?
12 A. IT GETS THERE MORE SLOWLY, CORRECT.
13 Q. AND IT DROPS OFF SOONER, DOES IT NOT?
14 A. NO, IT DOESN'T. IT LASTS LONGER.
15 Q. BUT AT A MUCH LOWER LEVEL?
16 A. IN MEDICATIONS THAT HAVE QUICK ONSET, THEY HAVE
17 QUICK OFFSET. THEY COME AND GO QUICKLY.
18 THAT'S WHAT HAPPENS WHEN YOU INHALE ANY DRUG.
19 WHEN YOU TAKE IT BY MOUTH, IT'S A GRADUAL ONSET AND LASTS
20 FOR A LONG TIME, BUT THE PEAK LEVEL IS LOWER.
21 IF YOU TAKE IT ORALLY AT THE SAME EXACT DOSE YOU
22 SMOKE, SO IF YOU WANT TO ACHIEVE THE SAME LEVEL, YOU WOULD
23 HAVE TO TAKE MORE ORALLY TO GET A HIGHER PEAK LEVEL.
24 Q. AND THE SAME IS TRUE, ALTHOUGH A SLIGHTLY
25 DIFFERENT MECHANISM FOR THE PATCH. YOU DON'T GET IT TO YOUR
26 BRAIN AS QUICKLY USING A PATCH AS YOU DO SMOKING A
27 CIGARETTE; IS THAT TRUE?
28 A. THAT IS TRUE.
5096

1 Q. AND, SIR, I BELIEVE THAT THERE IS CURRENT MEDICAL
2 THOUGHT THAT CIGARETTE SMOKING MAY BE RELATED TO DEPRESSION.

3 ARE YOU FAMILIAR WITH THAT?

4 A. I'M FAMILIAR WITH THE FINDINGS THAT DEPRESSED
5 PEOPLE ARE OVERREPRESENTED IN SMOKING POPULATIONS, AND THAT
6 SMOKING IS MORE FREQUENTLY SEEN IN PSYCHIATRIC POPULATIONS,
7 INCLUDING PATIENTS WITH DEPRESSION.

8 Q. AND, SIR, THAT'S WHY ONE OF THE DRUGS THAT IS
9 GIVEN FOR SMOKING CESSATION IS A DRUG THAT, WHEN IT'S GIVEN
10 FOR SMOKING CESSATION, IS CALLED ZYBAN, BUT THE SAME DRUG IS
11 GIVEN FOR DEPRESSION AND IT'S CALLED WELLBUTRIN; IS THAT
12 TRUE?

13 A. THE NAMES ARE TRUE, BUT YOU'RE ACTUALLY MISTAKEN
14 ABOUT THE FACT THAT PEOPLE NEED AN ANTIDEPRESSANT FOR
15 DEPRESSION WHEN THEY STOP SMOKING.

16 IN FACT, THE RESEARCH SHOWED THAT IT WAS NOT THE
17 ANTIDEPRESSANT EFFECT OF WELLBUTRIN THAT HELPS PEOPLE WITH
18 SMOKING. AND THAT'S VERY CLEAR.

19 Q. SIR, WHEN PEOPLE ARE GETTING HELP TO STOP
20 SMOKING, ONE OF THE MEDICATIONS THEY ARE GIVEN IS THE DRUG
21 KNOWN AS WELLBUTRIN OR ZYBAN; CORRECT? IT'S THE SAME DRUG,
22 IS IT NOT?

23 A. IT IS THE SAME DRUG.

24 Q. OKAY. AND PEOPLE ARE GIVEN THAT WHEN THEY ARE IN
25 SOME KIND OF A TREATMENT PROGRAM THAT PROVIDES MEDICATION;
26 CORRECT?

27 A. PEOPLE CAN BE PRESCRIBED ZYBAN AS A SMOKING
28 CESSATION AID, YES.

5097

1 Q. NOW, SIR, ONE OF THE FEATURES THAT I BELIEVE THAT
2 YOU SAID WERE NECESSARY FOR DRUG ADDICTION OR DRUG
3 DEPENDENCE IN THE DSM-IV WAS THIS CONCEPT THAT, BASICALLY,
4 YOU'D GO OUT AND YOU'D ROB A STORE TO GET ENOUGH MONEY TO
5 BUY YOUR DRUG, OR SOME KIND OF SOCIAL ILL; CORRECT?

6 A. NO, YOU ARE INCORRECT. I WAS STATING THAT, IN
7 THE 1964 DEFINITION, THEY MADE ADDICTION REQUIRE THAT AS
8 PART OF THEIR DEFINITION OF "COMPULSIVE USE."

9 THAT'S NOT IN THE DSM-IV.

10 Q. SO THAT'S BEEN ELIMINATED, SIR?

11 A. THAT'S CORRECT.

12 Q. AND THAT'S BEEN ELIMINATED, PARTICULARLY WITH
13 RESPECT TO NICOTINE ADDICTION OR NICOTINE DEPENDENCE,
14 BECAUSE CIGARETTES ARE READILY AVAILABLE; CORRECT?

15 A. THE CHANGE IN THE CRITERIA DID NOT NECESSARILY
16 REFLECT NICOTINE PER SE.

17 IT WAS A CHANGE IN THE CRITERIA AS PART OF AN
18 EFFORT TO COME UP WITH ONE SET OF CRITERIA. AND IT IS TRUE
19 THAT NICOTINE IS READILY AVAILABLE, AS IS ALCOHOL.

20 Q. AND, SIR, IN TERMS OF ALCOHOL, IT'S TRUE, IS IT
21 NOT, THAT EVEN PEOPLE WHO HAVE GIVEN UP ALCOHOL OFTEN REMAIN
22 SMOKERS, SO THAT IF YOU GO TO AN A.A. MEETING, YOU'RE LIABLE
23 TO WALK INTO A ROOM FILLED WITH SMOKE, ASSUMING YOU CAN
24 SMOKE IN THE ROOM?

25 A. THAT WAS DEFINITELY TRUE IN THE OLD DAYS, AND TO
26 A CERTAIN EXTENT STILL TRUE.

27 AND IT REFLECTS WHAT I WAS TALKING ABOUT BEFORE
28 IN TERMS OF WHERE THE FOCUS OF ALCOHOLISM IS. PEOPLE WHO

5098

1 ARE NEWLY SOBER HAVE THEIR GOAL, WHICH IS TRYING NOT TO
2 DRINK.

3 GENERALLY, IT TAKES THEM A WHILE. YOU TRY TO
4 WORK WITH PEOPLE WHO HAVE QUIT DRINKING TO INCREASE THEIR
5 MOTIVATION TO STOP SMOKING.

6 SO IT IS CORRECT, GENERALLY, PEOPLE DON'T STOP
7 SMOKING BEFORE THEY STOP DRINKING, BUT THEN CAN STOP
8 SMOKING, GENERALLY MORE SUCCESSFULLY, ONCE THEY GET SOBER
9 FROM ALCOHOL.

10 MS. CHABER: YOUR HONOR, I'M GOING TO GO ON TO
11 ANOTHER POINT. I DON'T KNOW WHEN YOU WANT TO TAKE YOUR
12 BREAK.

13 THE COURT: JURORS, PLEASE CONTINUE TO FOLLOW
14 THE ADMONITION.

15 WE'LL SEE YOU BACK AT 3:30.
16 (RECESS TAKEN FROM 3:10 TO 3:35 P.M.)

17 THE COURT: WE ARE BACK ON THE RECORD,
18 MS. CHABER.

19 MS. CHABER: THANK YOU, YOUR HONOR.

20 Q. DOCTOR, YOU HAD EXPRESSED THE CONCERN THAT THE
21 1998 SURGEON GENERAL'S REPORT ON NICOTINE ADDICTION, I THINK
22 YOU SAID, ONLY HAD TWO PSYCHIATRISTS?

23 MR. FURR: EXCUSE ME. THAT'S '88.

24 MS. CHABER: '88. WHAT DID I YOU SAY?

25 THE COURT: '88.

26 THE WITNESS: IT WAS ONE OF THE THINGS THAT
27 STRUCK ME IN REVIEWING THE AUTHORSHIP.

28 MS. CHABER: Q. NOW, SIR, DO YOU KNOW WHAT THE
5099

1 PROCESS IS FOR PREPARING A SURGEON GENERAL'S REPORT AND HOW
2 MANY PEER-REVIEW ANALYSES IT GOES THROUGH?

3 A. I DON'T KNOW THE EXACT PROCESS. ALTHOUGH MY
4 UNDERSTANDING IS THAT IT'S AN ATTEMPT TO HAVE A COMPENDIUM
5 OF INFORMATION FOR ITS TIME.

6 Q. SIR, DO YOU KNOW HOW MANY PEER-REVIEW PROCESSES
7 THE 1988 SURGEON GENERAL'S REPORT OR ANY OTHER SURGEON
8 GENERAL'S REPORT ON THE HEALTH CONSEQUENCES OF SMOKING HAVE
9 GONE THROUGH?

10 A. NO. I WOULDN'T KNOW THE EXACT NUMBER, NO.

11 Q. AND, SIR, YOU HAVE NEVER BEEN ASKED TO CONTRIBUTE
12 OR PARTICIPATE IN ANY OF THE SURGEON GENERAL REPORTS OR
13 THEIR PREPARATION?

14 A. NO. THEY WERE ALL BEFORE MY TIME.

15 Q. YOU GOT OUT OF MEDICAL SCHOOL WHEN?

16 A. I GOT OUT OF MEDICAL SCHOOL IN 1985.

17 Q. OKAY. AND SO I TAKE IT THAT IN 1988, YOU WERE
18 STILL IN YOUR RESIDENCY?

19 A. YES, I WAS.

20 Q. AND I WAS TAKING DOWN NOTES QUICKLY, AND I DIDN'T
21 HAVE YOUR CV IN FRONT OF ME.

22 YOUR UNDERGRADUATE, DID YOU GO TO HARVARD
23 UNIVERSITY?

24 A. YES, I DID.

25 Q. AND IN TERMS OF WHERE YOU DID YOUR RESIDENCY,
26 SIR, THAT WAS WHERE?

27 A. AT THE UCLA NEUROPSYCHIATRIC INSTITUTE IN LOS
28 ANGELES.

5100

1 Q. OKAY. AND YOU HAVE A PRIVATE PRACTICE NOW?

2 A. THAT'S CORRECT.

3 Q. AND IN ADDITION TO YOUR PRIVATE PRACTICE, YOU DO
4 FORENSIC MEDICINE; CORRECT?

5 A. WHAT I DO, BOTH IN MY JOB WITH THE DEPARTMENT OF
6 VETERANS AFFAIRS AND IN MY PRIVATE PRACTICE, IS SOME
7 FORENSIC PSYCHIATRY AS PART OF THE MIX OF MY PATIENT CARE
8 AND OTHER ACTIVITIES.

9 Q. AND, SIR, "FORENSIC" HAS TO DO WITH LEGAL ISSUES,
10 DOES IT NOT?

11 A. IT HAS TO DO WITH WHERE PSYCHIATRY AND LEGAL
12 ISSUES MEET.

13 Q. AND, SIR, IN TERMS OF A SMOKING-RELATED LAWSUIT
14 BROUGHT BY ANYONE, BE IT A GOVERNMENT, AN INDIVIDUAL OR
15 WHOMEVER, HAVE YOU NEVER BEEN ASKED TO BE AN EXPERT WITNESS
16 BY EITHER SIDE OTHER THAN THE PRESENT CASE?

17 A. NO, I HAVEN'T.

18 Q. AND, SIR, I TAKE IT, IN THE POPULATION OF PEOPLE
19 THAT COME TO SEE YOU -- LET ME STRIKE THAT.

20 LET'S SEE IF I UNDERSTAND CORRECTLY. DO ALL OF
21 YOUR PATIENT POPULATION COME FROM THE VETERANS
22 ADMINISTRATION?

23 A. NO, THEY DON'T.

24 Q. YOU HAVE SOME PRIVATE PATIENTS AS WELL THAT YOU
25 SEE THAT ARE OUTSIDE THAT SYSTEM?

26 A. THAT'S CORRECT.

27 Q. AND OF YOUR PRIVATE PATIENTS THAT COME TO SEE YOU
28 OUTSIDE THAT SYSTEM, HOW MANY OF THEM HAVE COME TO SEE YOU
5101 SOLELY FOR THE PURPOSE OF QUITTING SMOKING?

2 A. NO ONE HAS COME TO ME SOLELY FOR THE PURPOSE OF
3 QUITTING SMOKING. SO THE ANSWER WOULD BE ZERO.

4 Q. AND, SIR, ARE YOU FAMILIAR WITH THE NATIONAL
5 INSTITUTE ON DRUG ABUSE?

6 A. YES, I AM.

7 Q. AND ARE YOU FAMILIAR WITH OR HAVE YOU READ
8 WILLIAM POLLIN, THE DIRECTOR OF THE NATIONAL INSTITUTE, ON
9 DRUG ABUSE; ANYTHING ABOUT NICOTINE AND SMOKING?

10 A. I'M CONFUSED BY YOUR QUESTION. COULD YOU REPEAT
11 IT.

12 Q. HAVE YOU READ ANYTHING BY WILLIAM POLLIN, THE
13 DIRECTOR OF THE NATIONAL INSTITUTE ON DRUG ABUSE FOR SOME
14 TIME PERIOD? I'M NOT SAYING AT THE MOMENT.

15 A. OKAY. NOW I UNDERSTAND.

16 Q. HAVE YOU READ ANYTHING WRITTEN BY HIM?

17 A. I DON'T BELIEVE THAT I RECALL READING ANYTHING BY
18 HIM IN PARTICULAR, NO.

19 Q. DID YOU READ WHAT'S BEEN MARKED AS PLAINTIFFS'
20 1818, "WHY PEOPLE SMOKE CIGARETTES"?

21 A. I DON'T BELIEVE I'VE READ THAT ONE.

22 Q. AND SIR, I TAKE IT, IN THE POPULATIONS OF PEOPLE
23 THAT YOU DEAL WITH, YOU DEAL WITH PEOPLE WHO HAVE MULTIPLE
24 ADDICTIONS?

25 A. THAT'S USUALLY THE CASE.

26 Q. AND, SIR, DO YOU DEAL WITH MINORS OR YOUTH?

27 A. ON OCCASION, I EVALUATE ADOLESCENTS.

28 Q. WHEN YOU SAY "EVALUATE," WHAT DO YOU MEAN BY
5102 THAT?

1 A. I HAVE ADOLESCENTS BROUGHT TO ME FOR A
2 CONSULTATION, IN ORDER TO EVALUATE THEM, MAKE A DIAGNOSIS,
3 AND RECOMMEND TREATMENT.

4 Q. AND YOU DO THAT THROUGH WHICH OF YOUR DIFFERENT
5 ACTIVITIES? IS THIS PRIVATE PRACTICE?

6 A. THAT WOULD BE A PRIVATE PRACTICE CONSULTATION.

7 Q. YOU DON'T CONSIDER YOURSELF TO BE A PEDIATRIC
8 PSYCHIATRIST, THOUGH, DO YOU?

9 I'M NOT TO SAYING YOU DON'T HAVE ANY
10 QUALIFICATIONS. I'M JUST ASKING YOU, THAT'S NOT YOUR
11 MAIN --

12 A. MY FOCUS AND THE PATIENTS I RESTRICT MYSELF TO
13 HAS ALWAYS BEEN LATE ADOLESCENCE, BASED ON THE EXPERIENCE I
14 HAVE HAD WORKING AT STUDENT PSYCHOLOGICAL SERVICES AT UCLA.
15

16 SO GENERALLY, PEOPLE 17 OR OLDER.
17 Q. AND, SIR, WOULD YOU AGREE THAT DEPENDENCE ON
18 CIGARETTES IN MINORS IS THE FIRST ADDICTION DEVELOPED BY
19 WHAT BECOMES SUBSEQUENT MULTIDRUG USERS?
20 A. WELL, IT'S ACTUALLY QUITE VARIABLE. IT CAN BE
21 THE CASE, BUT IT'S CERTAINLY NOT ALWAYS THE CASE.
22 I HAVE NUMBERS OF PATIENTS WHO GOT INTO ALCOHOL
23 FIRST OR OTHER ACTIVITIES, BUT IT CAN BE SEEN, AND NOT
24 INFREQUENTLY.
25 Q. AND, SIR, WOULD YOU AGREE WITH THE FOLLOWING
26 STATEMENT: "CIGARETTE SMOKING IS LIKE THE UNWELCOME GUEST
27 AT THE PARTY. OFTEN THE FIRST SUBSTANCE TO ARRIVE, IT IS
28 USUALLY THE LAST TO LEAVE"?
5103
1 A. WELL, I LIKE THE QUOTE, BUT I DON'T KNOW WHAT TO
2 SAY ABOUT THAT.
3 Q. DO YOU AGREE THAT THAT IS A TRUE STATEMENT?
4 A. DO I AGREE THAT CIGARETTE SMOKING IS USUALLY,
5 AMONG YOUTH, THE FIRST DRUG THAT THEY PARTAKE IN AND THE
6 LAST ONE THAT THEY QUIT?
7 THAT REALLY HAS NOT NECESSARILY BEEN MY
8 EXPERIENCE WITH MY PATIENTS.
9 Q. SIR, ARE YOU FAMILIAR WITH THE JOURNAL OF THE
10 AMERICAN MEDICAL WOMEN'S ASSOCIATION?
11 A. THAT ONE, I DON'T TEND TO REVIEW, UNLESS THERE'S
12 A SPECIFIC ARTICLE THAT COMES UP ON A LITERATURE SEARCH.
13 Q. SIR, HAVE YOU EVER REVIEWED AN ARTICLE ENTITLED
14 "NICOTINE, A GATEWAY DRUG"?
15 A. I HAVEN'T REVIEWED THAT ARTICLE, BUT I'M FAMILIAR
16 WITH THE GATEWAY THEORY OR GATEWAY HYPOTHESIS.
17 Q. AND SIR, ARE YOU FAMILIAR WITH THE JOURNAL OF
18 SCHOOL HEALTH?
19 A. THAT ONE, I'M NOT NECESSARILY FAMILIAR WITH.
20 Q. BUT YOU DO LITERATURE SEARCHES, DON'T YOU, SIR,
21 WHERE YOU PUT CERTAIN INFORMATION IN?
22 A. SURE. I GO BY TOPIC. I JUST CAN'T RECALL HAVING
23 PULLED AN ARTICLE FROM THAT PARTICULAR JOURNAL.
24 Q. AND DO YOU RECALL READING AN ARTICLE ENTITLED
25 "CIGARETTE SMOKING AS A PREDICTOR OF ALCOHOL AND OTHER DRUG
26 USE BY CHILDREN AND ADOLESCENTS, EVIDENCE OF THE GATEWAY
27 DRUG EFFECT"?
28 A. AGAIN, I HAVEN'T READ THAT PARTICULAR ARTICLE,
5104
1 BUT I'M FAMILIAR WITH THE GATEWAY HYPOTHESIS.
2 Q. AND, SIR, ARE YOU FAMILIAR WITH AN ARTICLE
3 ENTITLED "PSYCHOSOCIAL AND PHARMACOLOGICAL EXPLANATIONS OF
4 NICOTINE, GATEWAY DRUG FUNCTION"?
5 A. I DON'T KNOW THAT I'M FAMILIAR WITH THAT
6 PARTICULAR ARTICLE.
7 Q. AND, SIR, ARE YOU FAMILIAR WITH THE REPORT OF THE
8 SURGEON GENERAL ON PREVENTING TOBACCO USE AMONG YOUNG
9 PEOPLE?
10 A. I'M SOMEWHAT FAMILIAR WITH IT, BUT NOT
11 INTIMATELY.
12 Q. ARE YOU FAMILIAR WITH THEIR ANALYSIS OF CIGARETTE
13 SMOKING AS A GATEWAY DRUG FOR THE USE OF ALCOHOL, MARIJUANA
14 AND COCAINE?
15 A. WELL, AS I HAVE SAID, I AM FAMILIAR WITH THE
16 GATEWAY HYPOTHESIS.
17 Q. AND, SIR, HAVE YOU LOOKED AT "TRENDS IN KNOWLEDGE
18 AND ATTITUDES ABOUT SMOKING AMONGST YOUTH"?
19 A. I MAY HAVE SEEN THAT ONE. IT'S HARD FOR ME TO
20 RECALL. I HAVE REVIEWED HUNDREDS OF ARTICLES IN THE PAST

21 SEVERAL YEARS.
22 Q. HAVE YOU REVIEWED ANY ARTICLES THAT LOOK AT 12 TO
23 18-YEAR-OLDS AND WHAT PERCENTAGE, AS OF 1989, BELIEVE THAT
24 THERE WAS NO HARM IN HAVING AN OCCASIONAL CIGARETTE?
25 A. I'VE SEEN LITERATURE ABOUT SUCH ISSUES, BUT I
26 DON'T RECALL THE NUMBERS FOR THAT PARTICULAR QUESTION.
27 Q. AND DO YOU KNOW HOW MANY SMOKERS IN THE 12 TO
28 18-YEAR-OLD RANGE VIEWED THERE BEING NO HARM IN HAVING AN
5105
1 OCCASIONAL CIGARETTE?
2 MR. FURR: OBJECTION. IT'S BEYOND THE SCOPE OF
3 THE DIRECT EXAMINATION.
4 THE COURT: I WILL OVERRULE.
5 THE WITNESS: I DON'T KNOW THE NUMBER NOW.
6 MS. CHABER: Q. DO YOU KNOW HOW MANY CHILDREN,
7 SIR, IN THE AGE 12 TO 18-YEAR-OLD GROUP BELIEVE THAT IT IS
8 SAFE TO SMOKE AS LONG AS YOU DON'T SMOKE FOR MORE THAN FIVE
9 YEARS?
10 MR. FURR: VAGUE. SAME OBJECTION. IT'S BEYOND
11 THE SCOPE OF DIRECT, YOUR HONOR.
12 THE COURT: HOW MUCH --
13 MS. CHABER: THIS IS --
14 THE COURT: HOLD ON. HOW MUCH OF THIS DO YOU
15 HAVE BECAUSE, ARGUABLY, IT'S BEYOND THE SCOPE.
16 IF I GIVE YOU A LITTLE LATITUDE, I MAY GIVE IT TO
17 YOU IF IT'S SHORT, BUT I MAY NOT IF IT'S LONG.
18 MS. CHABER: THAT'S A GOOD MOTIVATION. I GUESS
19 IT'S SHORT, YOUR HONOR.
20 THE COURT: IF IT'S SHORT, I WILL GIVE YOU SOME
21 LATITUDE ON IT.
22 MS. CHABER: Q. AND, SIR, DO YOU KNOW WHAT
23 13-YEAR-OLDS, IN 1972, WHAT PERCENTAGE OF THEM BELIEVED THAT
24 CIGARETTE SMOKING WAS SAFE AS LONG AS THEY DIDN'T DO IT FOR
25 MORE THAN FIVE YEARS?
26 A. NO, I DON'T KNOW WHAT THAT NUMBER WAS IN 1972.
27 Q. YOU KNOW THAT LESLIE WHITELEY WAS 13 IN 1972?
28 A. THAT WOULD BE CORRECT.
5106
1 Q. AND YOU KNOW THAT LESLIE WHITELEY STARTED SMOKING
2 CIGARETTES IN 1972?
3 A. MY UNDERSTANDING, ACCORDING TO MY RECOLLECTION,
4 WAS THAT SHE WAS 13.
5 SO THE ANSWER WOULD BE YES.
6 Q. AND DID YOU SEE, SIR, A COMMENT IN LESLIE
7 WHITELEY'S DEPOSITION THAT, AT THAT TIME WHEN SHE WAS 13,
8 SHE WAS NOT DOING ANY DRUGS OTHER THAN SMOKING CIGARETTES?
9 A. I DON'T RECALL SPECIFICALLY.
10 BUT IT IS MY IMPRESSION THAT CIGARETTES WERE
11 PROBABLY THE FIRST DRUG THAT SHE TRIED.
12 Q. AND, SIR, I SHOULD TAKE BETTER NOTES BECAUSE THEN
13 I WOULD BE ABLE TO READ THEM, OR MAYBE I SHOULD HAVE GONE TO
14 MEDICAL SCHOOL AND THEN IT WOULDN'T MATTER IF I COULD READ
15 THEM.
16 YOU WERE TALKING ABOUT THE WAR ON DRUGS AND
17 MEDICATIONS IN THE 1990S.
18 DO YOU RECALL THAT TESTIMONY?
19 A. I DID TALK ABOUT THE MEDICATION DEVELOPMENT
20 DIVISION AT NIDA.
21 Q. DID YOU TALK ABOUT THERE BEING A BIOLOGICAL
22 ASPECT THAT WAS CONSIDERED RELATED TO ADDICTION AT THAT TIME
23 PERIOD?
24 A. RIGHT. THE FOCUS OF THE MEDICATION DEVELOPMENT
25 DIVISION WAS TO TRY TO COME UP WITH A BIOLOGICAL MEDICATION

26 TO TREAT COCAINE DEPENDENCE.
27 Q. AND I THINK YOU SAID THAT THOSE WERE HEADY DAYS?
28 A. YES, THEY WERE.
5107
1 Q. OKAY. I WASN'T SURE.
2 YOU DIDN'T MEAN IT AS A PUN, DID YOU?
3 A. NO, I DIDN'T.
4 Q. OKAY. SIR, YOU'RE FAMILIAR WITH DR. NEAL
5 BENOWITZ?
6 A. I KNOW OF DR. BENOWITZ, YES.
7 Q. HAVE YOU MET DR. BENOWITZ?
8 A. NO, I ACTUALLY HAVEN'T HAD THE PLEASURE.
9 Q. DO YOU KNOW THAT DR. BENOWITZ IS A FULL PROFESSOR
10 IN THE DEPARTMENT OF PSYCHIATRY AT UCSF?
11 A. NOT ONLY DO I KNOW THAT, BUT I KNOW HE'S A HIGHLY
12 RENOWNED PHARMACOLOGIST AND A CARDIOLOGIST.
13 Q. AND DO YOU ALSO KNOW, SIR, THAT HE'S WELL
14 RESPECTED AS AN ADDICTION EXPERT?
15 A. I KNOW THAT HE'S WELL RESPECTED AS AN AUTHORITY
16 ON NICOTINE PHARMACOLOGY.
17 Q. SIR, HAVE YOU READ DR. BENOWITZ' ARTICLE OF
18 SEPTEMBER 1999 ON NICOTINE ADDICTION?
19 A. I DON'T BELIEVE I HAD A CHANCE TO READ THAT, NO.
20 Q. THAT'S ONE THAT, I TAKE IT, IF YOU HAD PUT IN THE
21 WORDS "NICOTINE" OR "ADDICTION," PROBABLY WOULD HAVE COME UP
22 ON WHATEVER SEARCH YOU WERE DOING?
23 A. THAT'S WHAT'S BOTHERING ME RIGHT NOW, BECAUSE I
24 HAVE BEEN DOING LIST SEARCHES JUST RECENTLY. I DON'T KNOW
25 HOW I MISSED THAT ONE. I WOULD HAVE LIKED TO READ IT.
26 Q. MAYBE BEFORE YOU LEAVE, I WILL GIVE YOU A COPY.
27 A. OKAY. THANK YOU.
28 Q. AND, SIR, DO YOU KNOW WHAT PERCENTAGE OF SMOKERS
5108
1 WHO QUIT SMOKING EACH YEAR QUIT SUCCESSFULLY?
2 A. IT'S A VERY SMALL PERCENTAGE. I'VE SEEN QUOTES
3 OF THREE TO 5 PERCENT FOR A PERSON ATTEMPTING A QUIT IN THE
4 BEGINNING OF THE YEAR. AND THEN LOOKING AT -- IF YOU TAKE
5 100 PEOPLE AT THE BEGINNING OF THE YEAR, THEY ALL QUIT ON
6 DAY ONE, YOU LOOK 12 MONTHS LATER, YOU HAVE ABOUT THREE OR
7 FIVE PEOPLE LEFT WHO SUCCEEDED WITH THAT QUIT ATTEMPT.
8 Q. AND, SIR, ALTHOUGH THE NUMBERS GO UP A BIT ABOVE
9 THAT, IF YOU GIVE PEOPLE COUNSELING, DRUG THERAPY, THE ZYBAN
10 WE WERE TALKING ABOUT, PATCHES, AND YOU FOLLOW THOSE PEOPLE
11 FOR A YEAR, ONLY 20 PERCENT, WITH ALL OF THAT HELP, HAVE
12 STILL REMAINED QUIT SMOKING.
13 ARE YOU FAMILIAR WITH THOSE STATISTICS?
14 A. APPROXIMATELY. THOSE NUMBERS SOUND CORRECT.
15 Q. AND, SIR, DO YOU BELIEVE THAT 13-YEAR-OLDS
16 EXERCISE THE SAME FREE WILL AND THE SAME PERSONAL
17 RESPONSIBILITY AS DO ADULTS?
18 A. WELL, IT'S AN INTERESTING QUESTION, AND I THINK
19 THERE IS A VARIETY OF OPINIONS ON IT.
20 I THINK THAT IT'S TRUE THAT 13-YEAR-OLDS TEND TO
21 SEE THEMSELVES AS BEING INVINCIBLE AND LIVING FOREVER, AND
22 THAT'S SOMETHING THAT CHANGES AS A PART OF THE WISDOM OF
23 ADULTHOOD, AND ADOLESCENTS DO TEND TO BE IMPULSIVE.
24 SO, YOU KNOW, THE ISSUE WITH 13-YEAR-OLDS IS
25 THAT, YOU KNOW, YOU GENERALLY DO HOLD THEM ACCOUNTABLE FOR
26 THEIR BEHAVIOR. THAT'S PART OF THEIR SCHOOLING. THAT'S
27 PART OF THEIR TRAINING TO BE ADULTS.
28 Q. AND, SIR, AT LEAST UNLESS THE CURRENT PROPOSITION
5109
1 PASSES IN CALIFORNIA, CHILDREN ARE HELD TO DIFFERENT

2 STANDARDS UNDER THE LAW; FOR EXAMPLE, IF THEY COMMIT MURDER?

3 A. WELL, THERE'S ALWAYS THE ISSUE ABOUT THE TRYING
4 OF ADOLESCENTS AS ADULTS, WHICH SEEMS TO BE DONE MORE AND
5 MORE FREQUENTLY.

6 Q. AND SIR --

7 A. JUST TO ADD TO THAT, THERE'S AN OLD ENGLISH
8 CONCEPT IN FORENSIC PSYCHIATRY THAT CHILDREN SEVEN YEARS OR
9 YOUNGER ARE UNABLE TO FORM INTENT, WHEREAS CHILDREN OVER THE
10 AGE OF SEVEN CAN FORM INTENT.

11 Q. AND THE INTENT IS NOT ALWAYS AN INTELLIGENTLY
12 EXERCISED INTENT AT THE AGE OF 13.

13 YOU'D AGREE WITH THAT; WOULD YOU NOT?

14 A. THE SAME AS ADULTS. THE INTENT IS OFTEN -- THE
15 PRISON IS FILLED WITH PEOPLE WITH BAD INTENT.

16 Q. AND, SIR, YOU WOULD AGREE THAT -- LET ME JUST ASK
17 YOU THIS OUTRIGHT. ASSUME THAT THE NUMBER OF PEOPLE WHO DIE
18 EVERY YEAR FROM CIGARETTE SMOKING OF 400,000-PLUS IS
19 CORRECT.

20 SIR, IN YOUR OPINION, DO ALL THOSE 400,000 PEOPLE
21 WHO DIE EACH YEAR FROM CIGARETTE SMOKING JUST LACK
22 MOTIVATION AND FREE WILL TO HAVE QUIT EARLIER IN THEIR
23 LIFE?

24 MR. FURR: OBJECTION. ARGUMENTATIVE.

25 THE COURT: OVERRULED.

26 THE WITNESS: OF THE PEOPLE WHO UNFORTUNATELY
27 COME DOWN WITH THE HEALTH EFFECTS, YOU KNOW, I DON'T KNOW
28 THAT ALL 400,000 PEOPLE HAVE NOT QUIT BEFORE, IF THEY DIDN'T

5110

1 QUIT WHEN THEY HAD WANTED TO QUIT OR THEY TRIED TO QUIT AND
2 FAILED, SO IT'S HARD FOR ME TO ANSWER THAT QUESTION.

3 BUT I'LL LEAVE IT AT THAT.

4 MS. CHABER: Q. AND YOU AGREE, SIR, THAT EVEN
5 OF THOSE PEOPLE WHO WANT TO QUIT AND TRY TO QUIT, AND USE
6 THE BEST THERAPIES THAT ARE KNOWN, ONLY 3 PERCENT OF THEM
7 SUCCEED IN ANY YEAR?

8 A. WELL, AS YOU SAID BEFORE, THAT'S NOT TRUE. IF
9 YOU UTILIZE PROFESSIONAL INTERVENTIONS AND THERAPY, YOU GET
10 UP TO ABOUT ONE OUT OF EVERY FIVE PEOPLE SUCCEED IN ONE QUIT
11 ATTEMPT.

12 Q. AND, SIR, IF YOU JUST TRY THE COLD TURKEY METHOD,
13 THEN WE'RE TALKING ABOUT ONLY 3 PERCENT OF THOSE PEOPLE
14 SUCCEED?

15 A. 3 PERCENT OF ALL COMERS, UNFORTUNATELY INCLUDING
16 PEOPLE WITH MULTIPLE DRUG ADDICTIONS, PEOPLE WITH
17 PSYCHIATRIC -- PEOPLE WHO ARE POOR PROGNOSIS CASES.

18 BUT IF YOU TAKE ALL COMERS WHO QUIT ON DAY ONE,
19 AT THE END OF 12 MONTHS, THAT QUIT ATTEMPT HAS FAILED IN
20 TERMS OF CONTINUING TO BE ABSTINENT IN EVERYONE BUT ABOUT
21 FIVE PEOPLE WHO ARE LEFT.

22 MS. CHABER: NOTHING FURTHER.

23 THE COURT: ANYTHING FURTHER FOR DR. BECKSON?

24 MR. FURR: YES, YOUR HONOR.

25 THE COURT: OKAY.

26 I WANT EVERYONE TO HAVE A FULL CHANCE TO ASK ALL
27 THE QUESTIONS YOU WANT, BUT I DO WANT TO MOVE ON SO WE CAN
28 COMPLETE THE EVIDENCE IN THIS CASE ACCORDING TO THE SCHEDULE

5111

1 I GAVE YOU.

2 SO LET'S KEEP THE SCHEDULE IN MIND AS WE GO
3 AHEAD.

4 MR. FURR: I WILL KEEP THAT IN MIND.

5 MS. CHABER: DOES THAT MEAN WE TALK FASTER?

6 THE COURT: NOT IF JUDITH HAS A VOTE.

7
8 REDIRECT EXAMINATION

9 MR. FURR: Q. DR. BECKSON, CLEAR UP SOMETHING
10 FOR ME. WHAT DOES THE FAGERSTROM DEPENDENCE QUESTIONNAIRE
11 MEASURE OR ASSESS?

12 A. IT WAS DESIGNED BY DR. FAGERSTROM TO MEASURE WHAT
13 HE CALLED AT THE TIME PHYSICAL DEPENDENCE.

14 THAT WAS IN THE LATE '70S, WHEN THE APPRECIATION
15 THAT NICOTINE, EVEN THOUGH IT DIDN'T CAUSE WHAT ALCOHOL AND
16 BARBITURATES AND HEROIN DID WHEN YOU WENT COLD TURKEY,
17 PRODUCED ITS OWN TYPE OF WITHDRAWAL SYNDROME.

18 SO HE WANTED TO COME UP WITH A QUESTIONNAIRE THAT
19 YOU COULD HAND OUT TO ANYONE WHO IS A SMOKER, LOW COST, IT
20 DOESN'T REQUIRE A PROFESSIONAL TO EVALUATE THE PERSON, GET
21 THEM TO FILL OUT YES OR NO, AND THEN DEVELOP A NUMBER WHICH
22 COULD TELL YOU IF THEY'RE PHYSICALLY DEPENDENT, WHICH WOULD
23 PREDICT WITHDRAWAL IF THEY STOPPED SMOKING.

24 WITH THE IDEA THAT, AT THAT TIME, NICOTINE GUM
25 WAS IN DEVELOPMENT TO HELP PEOPLE WITH WITHDRAWAL. SO IF
26 YOU COULD QUICKLY GIVE PEOPLE A QUESTIONNAIRE, COME UP WITH
27 A FAGERSTROM SCORE THAT WAS SEVEN OR ABOVE, THEN YOU MIGHT
28 SAY, "HEY, THIS PERSON WOULD BE HELPED BY NICOTINE GUM AND

5112 1 THIS OTHER PERSON WON'T BE."

2 AND THAT'S WHAT THE FAGERSTROM IS ALL ABOUT. IT
3 CAN BE A USEFUL TOOL. IT'S BEEN HEAVILY USED, PROBABLY
4 OVERUSED IN NICOTINE RESEARCH, AND IT'S BEEN SOMEWHAT USEFUL
5 IN TERMS OF TRYING TO DEVELOP NICOTINE GUM, NICOTINE
6 PATCHES.

7 Q. IS THE SCORE THAT A SMOKER OBTAINS ON THE
8 FAGERSTROM QUESTIONNAIRE PREDICTIVE OF THAT SMOKER'S ABILITY
9 TO QUIT SMOKING CIGARETTES?

10 A. NO. IT'S ACTUALLY BEEN SHOWN THAT THE FAGERSTROM
11 DOES NOT PREDICT WHO IS GOING TO QUIT OR WHO IS NOT GOING TO
12 QUIT.

13 Q. YOU WERE ASKED QUESTIONS BY MS. CHABER ABOUT THE
14 DEPOSITION TESTIMONY THAT MRS. WHITELEY GAVE OF HAVING
15 SMOKED UP TO ONE AND A HALF PACKS PER DAY OF CIGARETTES NEAR
16 THE END OF HER SMOKING BEHAVIOR.

17 DO YOU RECALL THAT?

18 A. WHAT I RECALL IS THAT I REMEMBER SEEING THAT SHE
19 HAD WRITTEN THAT OR SAID THAT IN HER DEPOSITION, WHICH
20 CONTRADICTED ALL OF THE MEDICAL RECORDS THAT I HAD REVIEWED,
21 WHICH WERE MORE IN THE RANGE OF SOMEWHERE BETWEEN HALF,
22 THREE-QUARTERS AND A PACK A DAY.

23 SO, YOU KNOW, I WASN'T THERE. I CAN'T TELL YOU
24 WHAT THE TRUTH WAS. I ONLY KNOW WHAT I RELIED ON, WHICH WAS
25 MULTIPLE REPORTS OF ONE PACK OR LESS A DAY, AND THEN MRS.
26 WHITELEY SAYING IN HER DEPOSITION THAT SHE WENT UP TO A PACK
27 AND A HALF.

28 Q. SO I TAKE IT, DOCTOR, THAT YOU FOUND AN

5113 1 INCONSISTENCY BETWEEN MRS. WHITELEY'S DEPOSITION TESTIMONY
2 AND THE INFORMATION CONTAINED IN THE MEDICAL RECORDS
3 REGARDING THE AMOUNT THAT MRS. WHITELEY SMOKED?

4 MS. CHABER: OBJECTION, YOUR HONOR.
5 ARGUMENTATIVE.

6 THE COURT: LEADING.

7 MS. CHABER: AND LEADING.

8 THE COURT: SUSTAINED.

9 MR. FURR: Q. DOCTOR, DID YOU FIND AN
10 INCONSISTENCY BETWEEN MRS. WHITELEY'S DEPOSITION TESTIMONY
11 AND THE MEDICAL RECORDS WITH RESPECT TO THE NUMBER OF

12 CIGARETTES THAT SHE SMOKED?
13 A. YES, IN THAT I SAW, ON SIX OR SEVEN DIFFERENT
14 LOCATIONS, INCLUDING SOME QUESTIONNAIRES THAT SHE FILLED OUT
15 FOR DIFFERENT DOCTORS HERSELF, THAT SHE SMOKED A PACK OR
16 LESS A DAY.
17 AND THEN IN HER DEPOSITION, SHE SAID SHE SMOKED,
18 AT THE END, A PACK AND A HALF.
19 SO I HAVE TO SAY YES, THERE WERE INCONSISTENCIES.
20 Q. MS. CHABER ASKED YOU TO LOOK AT A PAGE IN THE
21 DSM-IV THAT WAS TITLED "NICOTINE USE DISORDER, NICOTINE
22 DEPENDENCE."
23 DOES THAT HAVE AN EXHIBIT NUMBER ON IT, DOCTOR?
24 A. I HAVE A VARIETY OF EXHIBITS PILING UP HERE. I
25 HAVE 1822. I THINK THAT'S FROM MS. CHABER.
26 Q. RIGHT. LET ME ASK YOU A QUESTION ABOUT 1822.
27 A. YES, SIR.
28 Q. SHE ASKED YOU A QUESTION ABOUT A COUPLE OF

5114

1 SENTENCES IN THAT PARAGRAPH, DIDN'T SHE?
2 A. YES, SHE DID ASK ME ABOUT THIS DOCUMENT.
3 Q. AND THAT PARAGRAPH ON NICOTINE DEPENDENCE IS A
4 PARAGRAPH THAT DEALS WITH ADDITIONAL CONSIDERATIONS WHEN
5 APPLYING THE DSM-IV DRUG DEPENDENCE CRITERIA TO A PATIENT TO
6 EVALUATE NICOTINE DEPENDENCE; IS THAT CORRECT?
7 A. YES. IT GIVES YOU SOME -- FOR EACH OF THE
8 SUBSTANCES, INCLUDING NICOTINE, IT GIVES YOU A LITTLE BIT OF
9 BACKGROUND INFORMATION TO GUIDE YOU WITH GOING THROUGH THE
10 CRITERIA, BUT ALWAYS RELATES BACK TO THE CRITERIA FOR
11 SUBSTANCE DEPENDENCE.
12 Q. OKAY. I WANT YOU TO LOOK AT THE LAST SENTENCE OF
13 THE SECTION FROM WHICH MS. CHABER READ TO YOU, WHICH
14 STATES:
15 "CONTINUED USE, DESPITE KNOWLEDGE OF MEDICAL
16 PROBLEMS RELATING TO SMOKING, IS A PARTICULARLY
17 IMPORTANT HEALTH PROBLEM (E.G., AN INDIVIDUAL
18 WHO CONTINUES TO SMOKE DESPITE HAVING A
19 TOBACCO-INDUCED GENERAL MEDICAL CONDITION, SUCH
20 AS BRONCHITIS OR CHRONIC OBSTRUCTIVE LUNG
21 DISEASE)."
22 MY QUESTION TO YOU IS THIS: DID MRS. WHITELEY
23 CONTINUE TO SMOKE IN THE FACE OF SUCH A MEDICAL PROBLEM?
24 A. WELL, WHEN SHE WAS IMPRESSED THAT SHE HAD A
25 TOBACCO-INDUCED BRONCHITIS, SHE DID MAKE A DECISION TO QUIT
26 IN 1998.
27 Q. DID SHE SATISFY THIS CONDITION OR EXPLANATION
28 THAT I JUST READ TO YOU AS TO HOW TO APPLY THE DSM-IV

5115

1 CRITERIA FOR NICOTINE DEPENDENCE?
2 A. WELL, WHAT YOU ARE READING IS NOT A GUIDE ON HOW
3 TO FILL OUT THE CRITERIA. WHAT YOU'RE READING IS A GUIDE
4 THAT HAS BACKGROUND INFORMATION, ESSENTIALLY.
5 AND IT IS TRUE THAT CONTINUED USE OF TOBACCO IS A
6 PUBLIC HEALTH PROBLEM. I HAVE ABSOLUTELY NO DISAGREEMENT
7 WITH THAT. I THINK IT IS A PUBLIC HEALTH PROBLEM.
8 HOWEVER, THAT'S DIFFERENT FROM DETERMINING
9 CRITERION NO. 7, TO MAKE A DIAGNOSIS OF NICOTINE DEPENDENCE,
10 SAYING THIS IS AN ADDICTED PERSON.
11 IT REALLY COMES DOWN TO THE DIFFERENCE BETWEEN
12 TAKING A PUBLIC HEALTH PERSPECTIVE, WHICH IS IN -- YOU KNOW,
13 I TOOK PUBLIC HEALTH IN MEDICAL SCHOOL. WHAT CAN YOU DO TO
14 IMPROVE THE HEALTH OF THE POPULATION AS A WHOLE? SHOULD
15 PEOPLE BE ALLOWED TO DO THIS, DO THAT? SHOULD THERE BE
16 INFORMATION, NOT INFORMATION? THAT'S THE GOAL OF PUBLIC

17 HEALTH.
18 WHAT I DO AND WHAT THE DSM-IV IS ABOUT IS HOW TO
19 TREAT -- DIAGNOSE AND TREAT INDIVIDUAL PATIENTS WITH
20 PSYCHIATRIC DIAGNOSES.
21 AND SO THERE IS ALWAYS THAT CONFUSION, BECAUSE
22 YOU'RE LOOKING AT TWO DIFFERENT APPROACHES WITHIN WHAT'S
23 GLOBALLY REFERRED TO AS MEDICINE.
24 Q. MY QUESTION TO YOU, DR. BECKSON, IS: DID MRS.
25 WHITELEY CONTINUE TO SMOKE DESPITE KNOWLEDGE OF HAVING A
26 MEDICAL PROBLEM RELATED TO SMOKING?
27 A. NO, SHE DID NOT SMOKE DESPITE KNOWLEDGE OF HAVING
28 A MEDICAL PROBLEM RELATED TO SMOKING.

5116

1 Q. OKAY. YOU WERE ASKED SOME QUESTIONS ABOUT USE OF
2 ZYBAN AS AN AID IN SMOKING CESSATION PROGRAMS; RIGHT?
3 A. YES. THAT WAS MENTIONED.
4 Q. WHY IS ZYBAN USED IN SMOKING CESSATION PROGRAMS?
5 A. ZYBAN IS USED IN SMOKING CESSATION PROGRAMS
6 BECAUSE THE MANUFACTURER OF ZYBAN ACTUALLY HAD A GREAT
7 STROKE OF LUCK.
8 THEY TRIED THEIR MEDICATION WELLBUTRIN IN SMOKERS
9 BECAUSE IT CAN AFFECT DOPAMINE LEVELS, WITH THE IDEA THAT
10 "WE HAVE THIS DOPAMINE-AFFECTING MEDICATION. MAYBE IT WILL
11 HELP WITH THE CRAVINGS WHEN PEOPLE STOP."
12 SO THEY STARTED DOING SOME RESEARCH, AND THEIR
13 STUDIES SHOWED THAT, IN FACT, IF YOU GIVE PEOPLE ZYBAN, IT
14 CAN REDUCE THE CRAVINGS AND HELP PEOPLE STOP.
15 SO DURING THE WITHDRAWAL PERIOD, PEOPLE TAKE IT
16 FOR ABOUT SIX WEEKS. IT'S HELPFUL.
17 WHAT AROSE AS A QUESTION WAS: "IS IT HELPING
18 BECAUSE IT'S AN ANTIDEPRESSANT ALSO? DOES THAT HAVE
19 ANYTHING TO DO WITH IT?"
20 AND THEY ACTUALLY SHOWED THAT IT HAS NOTHING TO
21 DO WITH ANTIDEPRESSANT ACTIVITY. YOU TAKE THE ZYBAN AND IT
22 IMMEDIATELY WORKS. ANTIDEPRESSANTS TAKE THREE MONTHS TO
23 REALLY SHOW THEIR FULL EFFECT. AND BY THEN, YOU ARE ALREADY
24 OFF THE ZYBAN.
25 SO WHAT THEY SHOWED WAS -- AND THIS IS TRUE IN
26 LOTS OF PSYCHIATRY -- A FORTUITOUS DISCOVERY OF A
27 MEDICATION. ONE OF THE PROBLEMS WITH DEVELOPING MEDICATIONS
28 BASED ON RESEARCH IS YOU USUALLY FAIL.

5117

1 SO THEY LUCKED OUT, SMOKERS LUCKED OUT, AND ZYBAN
2 IS A GOOD CESSATION AID.
3 Q. YOU WERE ASKED SOME QUESTIONS ABOUT WHETHER
4 PATIENTS COME TO SOLELY TO BE TREATED FOR NICOTINE
5 DEPENDENCE. AND YOU TOLD MS. CHABER NO.
6 MY QUESTION IS: WHAT TYPE OF PATIENTS DO YOU END
7 UP TREATING FOR NICOTINE DEPENDENCE?
8 A. I TREAT THE MOST COMPLEX AND DIFFICULT PATIENTS,
9 THE PATIENTS WITH THE LOWEST PROGNOSIS.
10 THESE ARE PEOPLE WHO HAVE COME WITH ALCOHOL
11 DEPENDENCE AND NICOTINE DEPENDENCE, PEOPLE WHO HAVE
12 SCHIZOPHRENIA, WHO SMOKE HEAVILY. THOSE ARE MY PATIENTS.
13 Q. YOU WERE SOME ASKED QUESTIONS ABOUT NICOTINE AS A
14 GATEWAY DRUG.
15 MY QUESTION TO YOU IS THIS: DID YOU FIND ANY
16 EVIDENCE THAT MRS. WHITELEY'S CIGARETTE SMOKING LED TO HER
17 USE OF OTHER DRUGS?
18 A. WELL, THERE'S NO CLEAR CAUSALITY IN MRS.
19 WHITELEY, AND I DON'T BELIEVE THERE IS CLEAR CAUSALITY THAT
20 PROVES THE GATEWAY HYPOTHESIS IN GENERAL.
21 THAT'S JUST NOT BEEN MY REVIEW OF THE LITERATURE,

22 COMBINED WITH MY CLINICAL EXPERIENCE.
23 Q. NOW, YOU WERE ASKED SOME QUESTIONS ABOUT
24 DR. RICHARDSON'S OPINIONS REGARDING MRS. WHITELEY.
25 BUT WERE YOU ASKED ANY QUESTIONS ABOUT THAT JAMA
26 ARTICLE THAT YOU AND I MARKED FOR IDENTIFICATION?
27 MS. CHABER: WELL, YOUR HONOR, IF HE WASN'T,
28 THEN IT'S BEYOND THE SCOPE OF DIRECT. IT'S A
5118
1 SELF-FULFILLING PROPHECY.
2 THE COURT: IF THAT'S THE OBJECTION, IT'S
3 OVERRULED. THAT'S AN OBJECTIONABLE QUESTION, BUT THAT ISN'T
4 THE RIGHT OBJECTION.
5 MS. CHABER: IT'S ARGUMENTATIVE.
6 THE COURT: SUSTAINED.
7 MS. CHABER: THANK YOU.
8 THE WITNESS: YES.
9 MR. FURR: YOU CAN'T ANSWER.
10 THE COURT: SUSTAINED.
11 MR. FURR: Q. YOU WERE ASKED ABOUT DR.
12 BENOWITZ.
13 IS DR. BENOWITZ IS PSYCHIATRIST?
14 A. NO, HE IS NOT.
15 Q. LET ME ASK YOU A QUESTION ABOUT THIS -- WELL, ONE
16 MORE QUESTION.
17 YOU WERE ASKED LOTS OF QUESTIONS ABOUT THE NUMBER
18 OF EFFORTS REQUIRED BY SMOKERS TO QUIT, WHAT THE STATISTICS
19 WERE FOR SMOKERS ATTEMPTING TO QUIT.
20 BUT HOW MANY SERIOUS QUIT ATTEMPTS DID IT TAKE
21 MRS. WHITELEY TO STOP SMOKING?
22 A. WELL, IT DEPENDS HOW YOU ARE GOING TO DEFINE
23 "SERIOUS."
24 IN GENERAL, IN MY PRACTICE, I LOOK FOR: IS THE
25 PERSON -- HAS THE PERSON PUT SOME THOUGHT INTO IT, MADE
26 THEIR DECISION THAT THEY'RE GOING TO QUIT AND THEN PUT A
27 PLAN INTO ACTION?
28 AND IT EVEN MAKES HER 1988 QUIT ATTEMPT
5119
1 QUESTIONABLE, BECAUSE SHE KIND OF WENT ALONG WITH -- WENT
2 WITH THE FLOW WITH HER HUSBAND, WHO KIND OF REQUESTED, YOU
3 KNOW, "CAN YOU DO ME A FAVOR AND, YOU KNOW, QUIT WITH ME?"
4 I'M NOT SURPRISED THAT HER HUSBAND DID A LOT
5 BETTER THAN SHE DID. BUT, YOU KNOW, IF YOU DON'T INCLUDE
6 THAT, THEN YOU'RE LEFT WITH HER SUCCESSFUL QUITTING IN 1998.
7 IF YOU WANT TO INCLUDE THAT, THEN YOU'VE GOT TWO
8 QUIT ATTEMPTS.
9 Q. USING YOUR DEFINITION OF A "SERIOUS QUIT
10 ATTEMPT," DID MRS. WHITELEY EVER MAKE A SERIOUS QUIT ATTEMPT
11 THAT FAILED?
12 A. CAN YOU REPEAT THAT QUESTION.
13 Q. YES. USING THE DEFINITION OF "SERIOUS QUIT
14 ATTEMPT" THAT YOU JUST GAVE US, DID MRS. WHITELEY EVER MAKE
15 A SERIOUS QUIT ATTEMPT THAT FAILED?
16 A. NOT USING THE DEFINITION I JUST GAVE YOU.
17 MR. FURR: THANKS A LOT, DR. BECKSON.
18 THE COURT: ANYTHING FURTHER FOR THE DOCTOR OR
19 MAY HE BE EXCUSED?
20 MS. CHABER: I HAVE ONE LAST QUESTION.
21 THE COURT: OKAY.
22
23 RE-CROSS-EXAMINATION
24 BY MS. CHABER: Q. DOCTOR, DO YOU KNOW IF MRS.
25 WHITELEY STILL CRAVES CIGARETTES TODAY, EVEN WITH LUNG
26 CANCER, EVEN WITH THE METASTASES YOU TALKED ABOUT?

27 A. I WOULDN'T KNOW WHAT'S GOING ON WITH HER TODAY,
28 NO.
5120
1 MS. CHABER: NOTHING FURTHER.
2 THE COURT: ANYTHING FURTHER? MAY THE DOCTOR BE
3 EXCUSED?
4 MR. FURR: YES, YOUR HONOR.
5 MS. CHABER: YES.
6 THE COURT: OKAY, DOCTOR. YOU ARE EXCUSED.
7 THOSE PAPERS, YOU ARE GOING TO NEED TO LEAVE
8 THERE. WE ARE GOING TO HAVE TO PICK THEM UP, ASSUMING
9 THEY'RE NOT YOUR OWN PAPERS THAT YOU BROUGHT WITH YOU.
10 THE WITNESS: THAT'S CORRECT, YOUR HONOR.
11 THE COURT: OKAY. AND YOU HAVE TO LEAVE THE
12 BRAIN HERE AS WELL.
13 (WITNESS EXCUSED)
14 THE COURT: WHAT IS OUR NEXT ORDER OF BUSINESS?
15 MR. HARDY: YOUR HONOR, I THINK, AT THIS TIME
16 PHILIP MORRIS WOULD LIKE TO OFFER SOME DOCUMENTS INTO
17 EVIDENCE, AND THEN PUBLISH A FEW OF THEM TO THE JURY,
18 BEGINNING WITH SOME MEDICAL RECORDS OF MS. WHITELEY.
19 THE COURT: OKAY. HOW ARE WE GOING TO PROCEED?
20 MS. MASON: WHY DON'T I READ YOU THE NUMBERS
21 FIRST AND MOVE THEM ALL IN.
22 I WILL GIVE YOU AND COUNSEL A COPY.
23 THE COURT: I TAKE IT YOU DISCUSSED THESE WITH
24 MS. CHABER AND THERE IS NO OBJECTION TO THEM?
25 MS. CHABER: THESE ARE THE ONES --
26 MS. MASON: YES, WE DISCUSSED YESTERDAY.
27 (ATTORNEYS CONFER)
28 THE COURT: OKAY. WHY DON'T YOU READ THE LIST,
5121
1 WHAT YOU ARE OFFERING.
2 AND THEN I'LL ASK MS. CHABER --
3 MS. CHABER: ACTUALLY, I'LL ASK THIS QUESTION:
4 SINCE WE HAVE THE ACTUAL ONES HERE, IF I COULD GET THEM, AND
5 THEN I WOULD BE SURE. I AM SURE MS. MASON'S REPRESENTATIONS
6 ARE GOOD, BUT I WOULD --
7 THE COURT: IF SHE'S GOT THEM THERE, ABSOLUTELY.
8 MS. CHABER: THANK YOU.
9 MS. MASON: I JUST WANT TO MAKE SURE I DON'T
10 GIVE HER THE THREE-HOLE SET, YOUR HONOR.
11 THE COURT: DON'T GIVE HER THE THREE-HOLE SET.
12 (ATTORNEYS CONFER)
13 THE COURT: WE ARE READY FOR THE LIST.
14 MS. MASON: 3221, 3056, WHICH HAD BEEN PREMARKED
15 YOUR HONOR. 4856, WHICH IS MARKED NEXT IN ORDER.
16 (DOCUMENTS MORE PARTICULARLY
17 LISTED IN THE INDEX MARKED
18 FOR IDENTIFICATION DEFENDANTS'
19 EXHIBITS # 3221, 3056 AND 4856)
20 MS. MASON: SO YOU WILL NEED TO PUT IN YOUR
21 BINDER 4857, WHICH IS MARKED NEXT IN ORDER.
22 (DOCUMENT MORE PARTICULARLY
23 LISTED IN THE INDEX MARKED
24 FOR IDENTIFICATION DEFENDANTS'
25 EXHIBIT # 4857)
26 MS. MASON: 3062 AND THEN AGAIN, NEXT IN ORDER,
27 4858.
28 (DOCUMENTS MORE PARTICULARLY
5122
1 LISTED IN THE INDEX MARKED
2 FOR IDENTIFICATION DEFENDANTS'

3 EXHIBIT #S 3062 AND 4858)
4 MS. MASON: AND THEN, HERE ARE THE MEDICAL
5 RECORDS. 5922.11E, 5922.02B, 5922.02C, 5922.04F, 5922.04G,
6 5922.04A, 5922.02H, AND 5922.04E.
7 (DOCUMENT MORE PARTICULARLY
8 LISTED IN THE INDEX MARKED
9 FOR IDENTIFICATION DEFENDANTS'
10 EXHIBIT #S 5922.11E, 5922.02B,
11 5922.02C, 5922.04F, 5922.04G,
12 5922.04A, 5922.02H, AND 5922.04E)
13 THE COURT: OKAY. ANY OBJECTION TO ANY OF THOSE
14 GOING INTO EVIDENCE?
15 MS. CHABER: ONE MOMENT. I DON'T THINK SO, BUT
16 I'M JUST -- I'M NOT AS QUICK.
17 THE COURT: THAT'S FINE.
18 (ATTORNEYS CONFER)
19 MS. MASON: HERE IS YOUR SET, YOUR HONOR.
20 THE COURT: I THINK THE ONLY ONES I NEED ARE THE
21 NEWLY MARKED ONES. EVERYTHING ELSE I HAVE. IF YOU GIVE ME
22 THOSE THREE, I DON'T NEED THE REST.
23 MS. CHABER: NO OBJECTION.
24 THE COURT: NO OBJECTION.
25 ALL OF THOSE ARE RECEIVED.
26 (DOCUMENTS MORE PARTICULARLY
27 LISTED IN THE INDEX RECEIVED
28 IN EVIDENCE AS DEFENDANTS'
5123
1 EXHIBIT #S 3221, 3056, 4856,
2 4857, 3062, 4858, 5922.11E,
3 5922.02B, 5922.02C, 5922.04F,
4 5922.04G, 5922.04A, 5922.02H,
5 AND 5922.04E)
6 MS. CHABER: AND ACTUALLY, YOUR HONOR, THERE IS
7 NO OBJECTION, WITH THE UNDERSTANDING THAT SEVERAL OF THEM
8 NEED TO BE REDACTED.
9 AND WE HAVE DISCUSSED THAT OFF THE RECORD, AND
10 THAT WILL OCCUR SUBSEQUENTLY.
11 THE COURT: YOU ARE GOING TO TAKE CARE OF THAT
12 BETWEEN YOURSELVES?
13 MS. MASON: YES.
14 MS. CHABER: YES.
15 THE COURT: OKAY. THEY'RE ALL RECEIVED, WITH
16 THE UNDERSTANDING THAT COUNSEL WILL JOINTLY TAKE CARE OF ANY
17 MATTERS LIKE THAT.
18 MS. MASON: THANK YOU, YOUR HONOR.
19 MS. MASON: WOULD YOU GET THE LIGHTS.
20 THE COURT: I SHOULD JUST REMIND THE JURY THAT
21 THE LAWYERS WERE GIVEN AN OPPORTUNITY, AT SELECTED TIMES, TO
22 READ TO YOU FROM DOCUMENTS.
23 MS. CHABER DID THAT ONCE. AND I TAKE IT MS.
24 MASON IS GOING TO DO IT NOW, AS I UNDERSTAND IT.
25 (ATTORNEYS CONFER)
26 MS. MASON: I WILL JUST READ THESE PORTIONS OF
27 THESE ONES, YOUR HONOR.
28 THE COURT: OKAY. WHY DON'T YOU JUST STATE FOR
5124
1 THE RECORD THE NUMBER OF THE EXHIBIT YOU ARE READING FROM.
2 MS. MASON: I WILL.
3 THE FIRST ONE IS 5911.11E, "VENTURA COUNTY
4 MEDICAL CENTER PRENATAL FLOW RECORD." THE DATE IS
5 3-10-92. "LESLIE WHITELEY. CIGARETTES: ONE
6 HALF TO THREE-QUARTERS OF A PACK A DAY."
7 THE NEXT ONE IS 5911.02B. "COMMUNITY MEMORIAL

8 HOSPITAL. WHITELEY, LESLIE." 8-3-93 IS THE
9 DATE. "DO YOU SMOKE? IF YES, CHECK AMOUNT: ONE
10 HALF-ONE PACK A DAY."
11 THE NEXT ONE IS 5911.02C. "COMMUNITY MEMORIAL
12 HOSPITAL. LABOR AND DELIVERY FLOW CHART,
13 WHITELEY, LESLIE J., 8-15-96. TOBACCO, ONE PACK
14 A DAY."
15 THE NEXT ONE IS 5922.04F. "DATE 1-26-96, PATIENT
16 NAME WHITELEY, LESLIE. TOBACCO: ONE PACK PER
17 DAY."
18 5922.04G. "NAME, WHITELEY, LESLIE, DATE DECEMBER
19 4, 1996." FIRST ENTRY AT THE TOP: "SMOKES ONE
20 HALF PACK PER DAY."
21 SECOND ENTRY AT THE BOTTOM: "SMOKES ONE HALF
22 PACK PER DAY."
23 5922.04A. "NAME WHITELEY, LESLIE, DATE 6-10-98.
24 ONE PACK PER DAY TIMES 22 YEARS."
25 "COMMUNITY MEMORIAL HOSPITAL" -- THAT'S EXHIBIT
26 NO. 5922.02H. "COMMUNITY MEMORIAL HOSPITAL,
27 PATIENT NAME: LESLIE WHITELEY, DATE ADMITTED
28 6-20-98. DO YOU: "CHECK IF 'YES') SMOKE: QUIT

5125

1 FEBRUARY '98. ONE PACK A DAY."
2 5922.04E. "EMERGENCY ROOM REPORT. PATIENT NAME
3 WHITELEY, LESLIE, DATE 6-20-98. SHE STOPPED
4 SMOKING CIGARETTES AND HAS A 22 YEAR PACK YEAR
5 HISTORY OF CIGARETTE SMOKING."
6 AND THAT'S IT FOR THIS SET, YOUR HONOR. AND I'LL
7 DISPLAY THE OTHERS.

8 THE COURT: OKAY.
9 MS. MASON: EXHIBIT 3221, "PHILIP MORRIS & CO.,
10 LIMITED, NEW YORK, MAY 28, 1936.
11 "MR. EDWARD WEITZEN, 1585 EAST 172ND STREET,
12 BRONX, NEW YORK.
13 "DEAR MR. WEITZEN: YOUR WORK IS TO START NOW,
14 WITHIN A FEW DAYS.
15 "LET ME CAUTION YOU ONCE MORE AGAINST GIVING
16 SAMPLES TO MINORS. ALSO, PLEASE REMEMBER THAT
17 THESE CIGARETTES ARE TO BE DISTRIBUTED ONLY BY
18 YOURSELF, SINCE IT IS AGAINST REGULATIONS OF THE
19 U.S. TREASURY DEPARTMENT FOR OTHERS THAN PHILIP
20 MORRIS EMPLOYEES TO DISTRIBUTE THEM. "
21 EXHIBIT 3056. "PHILIP MORRIS INCORPORATED
22 INTEROFFICE CORRESPONDENCE. TO: MEMO TO THE
23 FILES. DATE: AUGUST 29, 1969. FROM: GEORGE
24 WEISSMAN. CC: C. KIBBEE H. POOLE. SUBJECT:
25 ARCHIE COMICS. CONFIDENTIAL.
26 "ON MONDAY, AUGUST 25, MR. PEREZ, AN ATTORNEY
27 AND PERSONAL ACQUAINTANCE TO ME, CALLED TO TELL
28 ME THAT HE REPRESENTED A MR. JOHN GOLDWATER WHO

5126

1 OWNED ALL THE RIGHTS TO ARCHIE COMICS FOR PRODUCT
2 AND OTHER USES.
3 "I INFORMED HIM THAT BECAUSE OF THE LINK TO
4 YOUTH WE WOULD NOT BE INTERESTED. GEORGE
5 WEISSMAN, GW."
6 4856. "JULY 17, 1978. REGISTERED MAIL. RETURN
7 RECEIPT REQUESTED.
8 "MR. SAMUEL COHEN, PRESIDENT, WORLD CANDIES,
9 INCORPORATED, 185 30TH STREET, BROOKLYN, NEW YORK
10 11232.
11 "RE: MARLBORO CANDY CIGARETTES.
12 "DEAR SIR: OUR CLIENT, PHILIP MORRIS

13 INCORPORATED, HAS SUBMITTED TO US A SAMPLE OF
14 YOUR MARLBORO 100S CANDY CIGARETTE PACKAGE WHICH
15 IS BEING MANUFACTURED IN THE UNITED STATES AND
16 HAS INSTRUCTED US TO INFORM YOU THAT THIS USAGE
17 MUST BE PROMPTLY DISCONTINUED.

18 "AS WE ARE SURE YOU KNOW, MARLBORO AND THE
19 PACKAGE DESIGN ARE AMONG THE MOST FAMOUS
20 TRADEMARKS IN THE WORLD. THEY ARE WIDELY
21 REGISTERED TRADEMARKS OF OUR CLIENT."

22 "MR. SAMUEL COHEN, PRESIDENT, WORLD CANDIES,
23 INCORPORATED, PAGE 2, JULY 17, 1978.

24 "IT IS OUR OPINION, AND WE HAVE SO INFORMED OUR
25 CLIENT, THAT YOUR USE OF THESE TRADEMARKS ON YOUR
26 CANDY CIGARETTES CONVEYS THE IMPRESSION THAT THIS
27 PRODUCT IS LICENSED BY, OR SPONSORED BY, OR IS IN
28 SOME WAY CONNECTED WITH, THE MANUFACTURER OF

5127

1 MARLBORO CIGARETTES. SUCH LIKELIHOOD OF
2 CONFUSION AS TO SOURCE OR SPONSORSHIP IS GROUND
3 FOR OUR MOTION FOR TRADEMARK INFRINGEMENT AND
4 UNFAIR COMPETITION.

5 OUR CLIENT HAS CONSISTENTLY PROTESTED THE USE OF
6 ITS CIGARETTE PACKAGING ON PRODUCTS OF THIS
7 SORT. MAY WE MAKE IT CLEAR THAT OUR CLIENT DOES
8 NOT WISH ANY OF OUR TRADEMARKS WHATSOEVER TO BE
9 UTILIZED ON CANDY CIGARETTE PACKAGING.

10 THERE HAS ALWAYS BEEN PROMPT AGREEMENT TO
11 DISCONTINUE THIS SORT OF USAGE. IN PARTICULAR,
12 YOU MAY RECALL OUR CORRESPONDENCE TWO YEARS AGO
13 WHICH ENDED WITH YOUR LETTER OF DECEMBER 15,
14 1976. IN THAT LETTER AND IN OUR TELEPHONE
15 CONVERSATIONS AT THE TIME, YOU AGREED TO SEE TO
16 THE PROMPT DISCONTINUANCE OF SARATOGA CANDY
17 CIGARETTES. OUR CLIENT RECENTLY FOUND A PACKAGE
18 OF THESE CIGARETTES ON SALE. WE TRUST THAT THIS
19 WAS AN ISOLATED INSTANCE AND REPRESENTS STALE
20 STOCK, BUT WE MUST ASK THAT YOU GIVE US FURTHER
21 ASSURANCES THAT YOU HAVE LONG SINCE STOPPED ANY
22 MANUFACTURE OR SALE OF THE SARATOGA PRODUCT.

23 "WE ASK ON BEHALF OF PHILIP MORRIS INCORPORATED
24 THAT YOU DISCONTINUE IMMEDIATELY YOUR USE OF THE
25 MARLBORO TRADEMARK IN THE UNITED STATES AND IN
26 ANY OTHER JURISDICTION IN WHICH YOU ARE UTILIZING
27 OUR CLIENT'S MARK. WE FURTHER ASK THAT YOU GIVE
28 US THE CONFIRMATION REQUESTED ABOVE THAT SARATOGA

5128

1 IS NO LONGER ON THE MARKET. WE THINK YOU WILL BE
2 WILLING TO DO SO BUT, IN ORDER TO GIVE YOU DUE
3 NOTICE, WE NOTIFY YOU HEREWITH THAT IF YOU FAIL
4 TO DO SO, PHILIP MORRIS INCORPORATED WILL LOOK TO
5 ITS LEGAL REMEDIES.

6 "WILL YOU PLEASE GIVE THE MATTER CAREFUL
7 CONSIDERATION AND ADVISE US PROMPTLY.

8 "YOURS SINCERELY, GEORGE P. KRAMER.

9 BCC: DENNIS F. KEENE, ESQUIRE."

10 4857: "WORLD CANDIES, INCORPORATED, 185 30TH
11 STREET, BROOKLYN, NEW YORK, 11232, SOUTH 8-8100.
12 JULY 27, 1978.

13 "CONBOY, HEWITT, O'BRIEN AND BOARDMAN, 20
14 EXCHANGE PLACE, NEW YORK, NEW YORK 11005.
15 ATTENTION: MR. GEORGE P. KRAMER.

16 "DEAR MR. KRAMER: WITH REFERENCE TO YOUR LETTER
17 OF JULY 17, PLEASE BE INFORMED THAT WE HAVE

18 ADVISED OUR BOX MANUFACTURERS TO DISCONTINUE THE
19 MANUFACTURE OF THE MARLBORO BOX IN ANY FUTURE
20 ORDERS.
21 "INSOFAR AS THE SARATOGA PACKAGE, WHAT YOU ARE
22 PROBABLY SEEING ON THE MARKET ARE SOME PACKAGES
23 WHICH ARE STILL AT THE WHOLESALERS.
24 "THANK YOU FOR YOUR COOPERATION, WE REMAIN, VERY
25 TRULY YOURS, WORLD CANDIES, INCORPORATED, SAMUEL
26 COHEN, PRESIDENT."
27 3062: "PHILIP MORRIS U.S.A., NOVEMBER 22, 1989,
28 MR. DON MILLER, VP AND GENERAL MANAGER,

5129

1 MOTORSPORTS INTERNATIONAL, 266 INDACOM DRIVE,
2 ST. PETERS, MISSOURI, 63376.
3 "DEAR DON: LEO ASKED ME TO REVIEW OUR
4 PARTICIPATION WITH THE TYRO REMOTE CONTROL CAR
5 WITH OUR LEGAL DEPARTMENT.
6 UNFORTUNATELY, WE CANNOT AUTHORIZE THE PRODUCTION
7 OF A MARLBORO CAR BECAUSE OF OUR POLICY TO MARKET
8 TO THE 21 AND ABOVE AGED CONSUMER.
9 "THE REMOTE CAR HAS THE ABILITY TO APPEAL TO
10 VARIOUS AGE GROUPS AND IN FACT STATES ON THE BOX
11 'AGES EIGHT AND ABOVE.'
12 "THANK YOU FOR GIVING US THE OPPORTUNITY TO
13 REVIEW THIS PROPOSAL.
14 "SINCERELY, DOREEN BAKER, MANAGER, MARLBORO
15 AUTOSPORTS."
16 PLAINTIFFS' EXHIBIT 35: "COPY NO. 4, PHILIP
17 MORRIS INCORPORATED. TOBACCO AND HEALTH-R&D
18 APPROACH. PRESENTATION TO R&D COMMITTEE BY DR.
19 H. WAKEHAM AT MEETING HELD IN NEW YORK OFFICE ON
20 NOVEMBER 15, 1961."
21 "EVIDENCE LINKING CANCER AND TOBACCO. BASED ON
22 TWO MAIN POINTS.
23 "1. STATISTICAL EVIDENCE THAT CERTAIN
24 DISEASES ARE MORE PREVALENT AMONG SMOKERS THAN
25 NONSMOKERS. LUNG CANCER, BLADDER CANCER,
26 CARDIOVASCULAR DISEASES. THESE ASSOCIATIONS
27 SUGGEST THAT SMOKING MAY BE A CAUSATIVE FACTOR.
28 "2. PHYSIOLOGICAL TESTS IN WHICH ANIMALS

5130

1 TREATED WITH SMOKE CONDENSATES, EXTRACTS OR
2 COMPOUNDS THEREFROM, SUFFER FROM INCREASED TUMOR
3 FREQUENCY. MOST TESTS INVOLVE SKIN PAINTING OR
4 INJECTIONS ON SPECIAL STRAINS OF MICE. SMOKING
5 INHALATION EXPERIMENTS HAVE FAILED TO PRODUCE
6 LUNG CANCER."
7 "THE PROBLEM OF CARCINOGEN IDENTIFICATION.
8 "NO. 1. MANY FACTORS NEED TO BE CONSIDERED IN
9 STUDYING CARCINOGENICITY."
10 "J.P. GREENSTEIN, BIOCHEMISTRY OF CANCER.
11 "THE CARCINOGENIC POTENCY OF AN AGENT DOES NOT
12 RESIDE IN THE NATURE OF THE AGENT ALONE BUT IS A
13 FUNCTION OF THE FOLLOWING FACTORS:
14 "(A) THE DOSAGE, THE NATURE OF THE VEHICLE, THE
15 MODE AND LENGTH OF TIME OF ADMINISTRATION OF THE
16 AGENT;
17 "(B) THE STRAIN, THE SPECIES, THE SEX, AND THE
18 AGE OF THE TEST ANIMALS.
19 "(C) THE SITE OF APPLICATION, THE PRESENCE OF
20 CONCOMITANT FACTORS SUCH AS THE LEVEL OF
21 ESSENTIAL DIETARY CONSTITUENTS AND THE NUMBER OF
22 ANIMALS KEPT IN A CAGE.

23 "NO. 2. ONE IN FIVE OF ALL RANDOMLY PERFORMED
24 CHRONIC TOXICITY TESTS REVEALS THE PRESENCE OF A
25 CARCINOGEN.
26 "HARTWELL, SURVEY OF COMPOUNDS WHICH HAVE BEEN
27 TESTED FOR CARCINOGENIC ACTIVITY, U.S. PUBLIC
28 HEALTH SERVICE - ABOUT ONE HALF (83) OF THE NEW
5131
1 CARCINOGENS BELONG TO FIVE CHEMICAL CLASSES AS
2 FOLLOWS:"
3 "PARTIAL LIST OF COMPOUNDS IN CIGARETTE SMOKE
4 ALSO IDENTIFIED AS CARCINOGENS."
5 "CANCER PROMOTING AGENTS IN CIGARETTE SMOKE.
6 ROE, SALAMAN, AND COHEN, BRITISH JOURNAL OF
7 CANCER, 1959.
8 "PRESENT EVIDENCE SUGGESTS THAT SMOKING HAS
9 STRONGER TUMOR-PROMOTING THAN TUMOR-INITIATING
10 EFFECT. STRONG TUMOR-PROMOTING EFFECT BY A
11 PHENOLIC FRACTION OF CIGARETTE SMOKE CONDENSATE
12 APPLIED AFTER A SINGLE TUMOR-INITIATING DOSE OF
13 9, 10-DIMENTHL-1, 2-BENZANTHRACENE (DMBA) TO THE
14 DORSAL SKIN OF '101' STRAIN MICE WAS OBSERVED:
15 65 BENIGN AND TWO MALIGNANT TUMORS AROSE ON 30
16 MICE DURING 40 WEEKS OF TREATMENT. THE SAME DOSE
17 OF DMBA ALONE PRODUCED A NEGLIGIBLE NUMBER OF
18 TUMORS, AND THE PHENOLIC FRACTION ALONE PRODUCED
19 NONE.
20 "SOME PROMOTING AGENTS. PHENOLS, LIQUID
21 PARAFFIN HYDROCARBONS, ORGANIC ACID ESTERS,
22 FATS, OLEATES, CHOLESTEROL, BENZENE, IODOACETIC
23 ACID, CHLORACETOPHENONE, PROFLAVINE, ETHANOLAMINE
24 TURPENTINE."
25 "ANTI-CARCINOGENS."
26 MS. CHABER: WHAT PAGE ARE YOU ON?
27 MS. MASON: 4371.
28 "R&D PROGRAM LEADING TO A MEDICALLY ACCEPTABLE
5132
1 CIGARETTE.
2 "PRESENT KNOWLEDGE AND CURRENT RESEARCH INDICATE
3 THREE MAIN APPROACHES.
4 I. REDUCTION OF IRRITATING FACTORS IN SMOKE.
5 "THIS INVOLVES EXTENSION OF CURRENT WORK IN
6 TOBACCO CHEMISTRY, FLAVOR AND IRRITATION STUDIES,
7 AND SELECTED GAS PHASE FILTRATION. COST
8 GUESSTIMATE: \$3 MILLION.
9 "II. CONTROLLED NICOTINE AND FILLER AND SMOKE.
10 "THIS PROGRAM IS PARTIALLY COMPLETE AND COULD BE
11 FINISHED IN 18 TO 24 MONTHS. COST GUESSTIMATE:
12 (TO SMALL PILOT PLANT STAGE): \$1 MILLION.
13 "III. REDUCTION OF THE GENERAL LEVEL OF
14 CARCINOGENIC SUBSTANCES IN SMOKE (BUT WITHOUT
15 COMPLETE ELIMINATION OF MORE THAN A FEW SPECIFIC
16 COMPOUNDS.)
17 "COST AND TIME GUESSTIMATE: \$10 MILLION AND
18 SEVEN TO 10 YEARS.
19 "REDUCTION OF IRRITATING FACTORS IN SMOKE.
20 "A. THIS APPROACH IS BASED ON THE HYPOTHESIS
21 THAT PHYSIOLOGICAL IRRITATIONS ARE A FIRST STEP
22 IN THE INITIATION OF MORE SERIOUS AILMENTS.
23 "B. PLAN:
24 "1. DEVELOPMENT OF OBJECTIVE TEST FOR
25 IRRITATION.
26 "2. IDENTIFICATION OF IRRITATING CONSTITUENTS.
27 "3. SELECTIVE ELIMINATION OF IRRITANTS FROM

28 SMOKE.
5133

1 "A. BY SELECTIVE FILTRATION OF GAS PHASE.
2 "B. BY MODIFICATION OF CIGARETTE CHEMISTRY
3 THROUGH (1) ADDITIVES TO CONTROL PYROLYSIS
4 REACTIONS; (2). SELECTION OF FILLER BLENDS.
5 "C. THIS PROGRAM IS CLOSELY RELATED TO FLAVOR
6 IMPROVEMENT AND INCREASED CONSUMER
7 ACCEPTABILITY; HENCE, IT HAS A DOUBLE ADVANTAGE
8 TO PRODUCT ENHANCEMENT.
9 "II. CONTROLLED NICOTINE AND FILLER AND SMOKE.
10 "EVEN THOUGH NICOTINE IS BELIEVED ESSENTIAL TO
11 CIGARETTE ACCEPTABILITY, A REDUCTION IN LEVEL
12 MAYBE DESIRABLE FROM MEDICAL REASONS.
13 "PROBLEMS:
14 "1. HOW MUCH NICOTINE REDUCTION WILL BE
15 ACCEPTABLE TO THE SMOKER?
16 "2. WHAT TASTE DIFFERENCES WILL BE TOLERATED?
17 "3. IS IT BETTER TO EXTRACT BURLEY, BRIGHT, OR
18 BOTH FOR LOW NICOTINE PRODUCT OF MAXIMUM CONSUMER
19 ACCEPTABILITY?
20 "CONSUMER TESTS ARE UNDER WAY TO ANSWER THESE
21 QUESTIONS.
22 "2. PROCESSES AVAILABLE FOR FLAVORFUL, LOW
23 NICOTINE TOBACCO:
24 1.. THE ROSENTHAL PROCESS -- NOW BEING
25 NEGOTIATED.
26 "2. THE MEK EXTRACTION PROCESS -- IT IS PLANNED
27 TO DESIGN A SMALL PILOT PLANT, APPLICABLE TO
28 EITHER BURLEY OR BRIGHT.
5134

1 "(A) TO PROVIDE ENGINEERING PROCESS DATA USEFUL
2 FOR UPSCALING IF DESIRED.
3 "(B) TO SERVE AS A STANDBY UNIT SUITABLE FOR
4 PRODUCTION OF MINOR BRAND WHICH COULD BE
5 INTRODUCED IN RESPONSE TO PUBLIC DEMAND.
6 "THE USE OF LOW-NICOTINE TOBACCOS WILL ALSO BE
7 CONSIDERED.
8 "III. REDUCTION OF CARCINOGENS IN SMOKE.
9 "TO ACHIEVE THIS OBJECTIVE WILL REQUIRE A MAJOR
10 RESEARCH EFFORT, BECAUSE
11 "1. CARCINOGENS ARE FOUND IN PRACTICALLY EVERY
12 CLASS OF COMPOUNDS IN SMOKE.
13 "THIS FACT PROHIBITS COMPLETE SOLUTION OF THE
14 PROBLEM BY ELIMINATING ONE OR TWO CLASSES OF
15 COMPOUNDS.
16 "THE BEST WE CAN HOPE FOR IS TO REDUCE A
17 PARTICULARLY BAD CLASS, I.E., THE POLYCYCLIC
18 AROMATIC HYDROCARBONS OR PHENOLS.
19 "2. PRESENT TECHNOLOGY DOES NOT PERMIT
20 SELECTIVE FILTRATION OF PARTICULATE SMOKE.
21 "3. FLAVOR SUBSTANCES AND CARCINOGENIC
22 SUBSTANCES COME FROM THE SAME CLASSES, IN MANY
23 INSTANCES.
24 "4. MANY PYROLYSIS PRODUCTS HAVE MULTIPLE
25 PRECURSORS IN TOBACCO."
26 "SOME POSSIBLE WAYS TO REDUCE CARCINOGENS IN
27 TOBACCO SMOKE.
28 "1. DISCOVER MAJOR PRECURSORS FOR CARCINOGENS
5135

1 AND/OR CANCER PROMOTERS.
2 2. DISCOVER MECHANISM OR CONDITIONS BY WHICH
3 CARCINOGENS ARE PRODUCED AND MODIFIED THOSE

4 CONDITIONS.
5 "3. SELECT EXPERIMENTAL TOBACCOS WHICH PRODUCE
6 A MINIMUM OF CARCINOGENS.
7 "4. ADD ANTICARCINOGENS.
8 "5. DISCOVER DIFFERENCES IN PARTICULATE
9 FRACTIONS WHICH WILL PERMIT SEPARATION OF
10 CARCINOGENS IN SMOKE."
11 "SUMMARY. LOW IRRITATION AND LOW NICOTINE
12 CIGARETTES FOR COMMERCIAL EXPLOITATION WILL BE
13 DEVELOPED IN THE COURSE OF OUR PRESENT R&D
14 PROGRAM DURING THE NEXT TWO TO FIVE YEARS WITH AN
15 EXPENDITURE OF NOT MORE THAN 25 PERCENT OF THE
16 R&D BUDGETS DURING THIS PERIOD.
17 "A MEDICALLY ACCEPTABLE LOW-CARCINOGEN CIGARETTE
18 MAY BE POSSIBLE. ITS DEVELOPMENT WOULD REQUIRE
19 TIME, MONEY, UNFALTERING DETERMINATION."
20 MS. CHABER: IS THAT THE END OF THAT DOCUMENT?
21 MS. MASON: YES.
22 MS. CHABER: I HAVE A PAGE OR TWO TO READ.
23 MS. MASON: OKAY.
24 MS. CHABER: YOU CAN STAY THERE. IT WILL TAKE
25 ONE SECOND.
26 MS. MASON: SURE.
27 MS. CHABER: THIS IS FROM THE SAME DOCUMENT IN
28 1961 OF THE "PRESENTATION TO THE R&D COMMITTEE BY DR. H.
5136 WAKEHAM AT MEETING HELD IN NEW YORK OFFICE ON NOVEMBER 15,
1 1961."
2
3 "CHEMISTRY OF CIGARETTE SMOKE. TOTAL OF MORE
4 THAN 400 COMPOUNDS OF WHICH ABOUT 50 HAVE BEEN
5 IDENTIFIED FOR THE FIRST TIME BY THE PHILIP
6 MORRIS RESEARCH CENTER."
7 THAT'S IT.
8 MS. MASON: 3506: "PUFFING BEHAVIOR ON HIGH AND
9 LOW DELIVERY CIGARETTES.
10 "PHILIP MORRIS U.S.A. RESEARCH CENTER.
11 SEPTEMBER, 1973.
12 "PUFFING BEHAVIOR ON HIGH AND LOW DELIVERY
13 CIGARETTES. WRITTEN BY F. J. RYAN AND B. R.
14 HANCOCK. APPROVED BY W.L. DUNN."
15 THE COURT: JUST FOR THE RECORD, YOU SAID 3506,
16 BUT ISN'T IT 3056?
17 MS. MASON: I'M GOING TO READ THEM BOTH, YOUR
18 HONOR.
19 THE COURT: OKAY. I WASN'T GOING FROM THE LIST
20 YOU JUST READ.
21 MS. MASON: MAYBE I DID DO THAT WRONG. 3506.
22 THE COURT: YOU OFFERED INTO EVIDENCE 3056.
23 MR. HARDY: YES, AND SHE PUBLISHED IT. BUT
24 3506 WAS ALREADY IN EVIDENCE. WE JUST PUBLISHED IT.
25 THE COURT: THAT'S FINE.
26 MS. MASON: "SUMMARY. TWO CIGARETTES WITH
27 NOMINAL DELIVERIES OF 14.6 AND 20.7 MILLIGRAMS
28 FTC TAR WERE PUFFED IN SIMILAR FASHION BY
5137
1 IN-HOUSE SMOKERS, CONTRARY TO EXPECTATIONS.
2 "THE ISSUES OF SMOKER SENSITIVITY AND THE FTC
3 TAR COMPENSATION HYPOTHESIS ARE DISCUSSED IN
4 LIGHT OF THE DATA OBTAINED."
5 "INTRODUCTION. WHEN T. SCHORI REPORTED STUDY
6 JND-2, TITLED "SMOKER INSENSITIVITY REVISITED."
7 HIS FINDINGS SEEMED HARD TO BELIEVE. HE HAD
8 ASKED A NATIONAL POL PANEL TO SMOKE AND RATE TWO

9 CIGARETTES BASED ON EXPERIENCE SMOKING TWO OR
10 THREE PACKS OF EACH. THE 123 RESPONDENTS
11 REPORTED NO SIGNIFICANT RATING DIFFERENCES IN
12 EITHER PREFERENCE OR STRENGTH FOR THE UNMARKED
13 MARLBORO-LIKE PRODUCTS.
14 "BECAUSE THE ANALYTICAL DIFFERENCES BETWEEN THE
15 TWO TEST PRODUCTS WERE SO GREAT (14.6 MILLIGRAMS
16 FTC TAR AND 1.03 MILLIGRAMS NICOTINE PER
17 CIGARETTE VERSUS 20.7 MILLIGRAMS FTC TAR AND 1.43
18 MILLIGRAMS NICOTINE PER CIGARETTE) IT WAS
19 SUGGESTED THAT THE REASON PANELISTS HAD NOT
20 NOTICED THE STRENGTH DIFFERENCE MUST HAVE BEEN
21 THAT THEY HAD SMOKED THE PRODUCTS DIFFERENTLY.
22 "IT WAS ARGUED THAT PANELISTS MIGHT HAVE
23 MODIFIED THEIR PUFF INTAKES, PERHAPS
24 UNCONSCIOUSLY, TO TAKE IN MORE SMOKE PER PUFF
25 FROM THE 14.6 MILLIGRAM MODEL, AND HENCE TO
26 RECEIVE THE SAME TASTE EFFECT AS A SMALLER PUFF
27 FROM THE 20.7 MILLIGRAM MODEL.
28 "ALTERNATIVELY, IT WAS SUGGESTED THAT PANELISTS

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1 MIGHT HAVE CHANGED THEIR FLOW RATES FROM ONE
2 PRODUCT TO ANOTHER, TAKING IN THE SMOKE AT
3 DIFFERENT RATES AND THUS PRODUCING DIFFERENT
4 COMBUSTION CONDITIONS. THE DIFFERENT CONDITIONS
5 MIGHT LEAD TO DIFFERENT TAR AND NICOTINE
6 DELIVERIES PER PUFF THAN WOULD BE OBTAINED FROM
7 PUFFS AT THE SMOKING MACHINE FLOW RATES.
8 "EITHER OF THESE ARGUMENTS SUGGESTS THAT MUST BE
9 SOME EXPLANATION OTHER THAN 'SMOKER
10 INSENSITIVITY' BEHIND THE FAILURE TO OBTAIN
11 DIFFERENT RATINGS FOR PRODUCTS WHICH ARE 6.1
12 MILLIGRAMS DIFFERENT IN FTC TAR DELIVERY."
13 (ATTORNEYS CONFER)
14 MS. MASON: "ACCORDINGLY, WE WERE ASKED TO FIND
15 WHETHER A GROUP OF IN-HOUSE PANELISTS 'SMOKED THE
16 TWO CIGARETTES DIFFERENTLY.' IT WAS KNOWN FROM
17 THE PRELIMINARY WORK OF RYAN IN PUFF II (1973)
18 THAT WHEN DIFFERENCES BETWEEN CIGARETTES ARE
19 LARGE, AS FOR EXAMPLE BETWEEN CARLTON,
20 MULTIFILTER, AND MARLBORO, THAT SUCH DEPENDENT
21 VARIABLES AS NUMBER OF PUFFS, PUFF VOLUME, FLOW
22 RATE, AND PUFF DURATION ARE APT TO BE DIFFERENT.
23 ON THE OTHER HAND, WHEN DIFFERENCES BETWEEN
24 CIGARETTES ARE SLIGHT, AS BETWEEN MARLBORO AND
25 WINSTON, THERE ARE FEW IF ANY DIFFERENCES IN THE
26 DEPENDENT VARIABLES WHICH DESCRIBE THE PUFFING
27 BEHAVIOR. CAN THE DIFFERENCE BETWEEN 14.6 AND
28 20.7 MILLIGRAMS BE CONSIDERED SLIGHT OR LARGE?

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1 "CONSIDERABLE EVIDENCE FROM SALES FIGURES AND
2 FROM STUDIES OF SMOKE EXPOSURE BY DUNN (1968)
3 DUNN, SCHORI AND DUGGINS (1973), AND RYAN (1970)
4 SUGGEST THAT DECREASES IN NOMINAL TAR AND
5 NICOTINE DELIVERY LEAD TO INCREASES IN NUMBER OF
6 CIGARETTES SMOKED PER DAY AND THAT INCREASES IN
7 NOMINAL DELIVERIES PRODUCE CONSUMPTION
8 DECREASES.
9 "THE LATTER TWO STUDIES CONTAINED OBSERVATIONS
10 OF CHANGES IN BUTT LENGTH RELATED TO DELIVERY
11 DIFFERENCES SUGGESTING THAT FEWER PUFFS WOULD BE
12 TAKEN WHEN SWITCHED TO INCREASED DELIVERY AND/OR
13 MORE PUFFS BE TAKEN WHEN SWITCHED TO DECREASED

14 DELIVERY CIGARETTES. THE DUNN, SCHORI AND
15 DUGGINS DATA REVEAL THESE OBSERVATIONS ONLY WHEN
16 CHANGES IN STATIC BURN TIME ARE TAKEN INTO
17 ACCOUNT BETWEEN THE CIGARETTES OF 1968 AND 1972.
18 THESE OBSERVATIONS SUPPORT THE HYPOTHESIS THAT
19 SMOKERS ATTEMPT TO GET A CERTAIN DOSE OF TAR
20 AND/OR NICOTINE FROM THEIR CIGARETTES AND ADJUST
21 THEIR PUFFING BEHAVIOR ACCORDINGLY. WE CALL THIS
22 THE 'COMPENSATION HYPOTHESIS.' THIS HYPOTHESIS
23 SUGGESTS MORE PUFFS WOULD BE TAKEN ON A 14.6
24 MILLIGRAM CIGARETTE.
25 "NO MAJOR DIFFERENCES BETWEEN MODELS WERE
26 EXPECTED IN AVERAGE PUFF DURATION. THUS, WE HAD
27 A MISCELLANY OF INFORMATION AND SPECULATION,
28 GATHERED FROM A NUMBER OF SOURCES, ON WHAT TO

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1 EXPECT WHEN SMOKERS CONSUMED TWO ANALYTICALLY
2 DIFFERENT CIGARETTES WHICH POL PANELISTS HAD
3 RATED SIMILARLY. WITH THESE OFTEN CONFLICTING
4 OBSERVATIONS IN MIND, WE THEN MEASURED 'THE WAY
5 THE TWO CIGARETTES WERE SMOKED.'"
6 "RESULTS. TABLE 1 SUMMARIZES THE BEHAVIORAL
7 DATA OBTAINED FROM THE NINE MEASURES ON NINE
8 SMOKERS. THE NUMBER OF PUFFS TAKEN PER
9 CIGARETTE, MEAN SMOKE VOLUME PER PUFF, AND MEAN
10 INTERPUFF INTERVAL WERE NOT SIGNIFICANTLY
11 DIFFERENT ON EITHER CIGARETTE, WHETHER FIRST
12 PUFFS WERE INCLUDED OR NOT. THE MEAN PUFF
13 DURATIONS DIFFERED SLIGHTLY, THE DIFFERENCE NOT
14 BEING SIGNIFICANT IF THE LONGER FIRST PUFFS ARE
15 INCLUDED, BUT REACHING THE .05 LEVEL IF THE FIRST
16 PUFFS ARE EXCLUDED. THE MEAN MAXIMUM FLOW RATES
17 DIFFERED, WITH THE LOWER FLOW BEING ACHIEVED ON
18 THE LOWER DELIVERY CIGARETTE, WHICH HAD THE
19 HIGHER RTD.
20 "IF A SMOKER APPLIES THE SAME SUCTION TO TWO
21 CIGARETTES WITH DIFFERENT RTD, THEN IT WILL TAKE
22 HIM LONGER TO GET A MOUTHFUL OF SMOKE FROM THE
23 CIGARETTE WITH THE HIGHER RTD FOR THE FLOW RATE
24 OF SMOKE THROUGH THE FILTER WILL BE LOWER.
25 THEREFORE, THESE TWO OBSERVATIONS ARE CONSONANT
26 WITH THE HYPOTHESIS THAT SMOKERS SUCK EVEN
27 EQUALLY HARD ON THESE CIGARETTES. (IT'S
28 INTERESTING TO ASK WHETHER SMOKERS CAN ADJUST

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1 THEIR PUFFING BEHAVIOR TO ACHIEVE EQUAL FLOW
2 RATES ON CIGARETTES WITH UNEQUAL RTD'S. THE DATA
3 WHICH SUGGEST THAT THEY DO NOT, DO NOT MEAN THAT
4 THEY CANNOT.)"
5 "DISCUSSION AND FURTHER EVIDENCE.
6 "IT IS CLEAR THESE SMOKERS DID NOT MODIFY
7 THEIR PUFF VOLUMES TO TAKE IN MORE SMOKE FROM THE
8 14.6 MILLIGRAM CIGARETTE. WHETHER POL PAN LISTS
9 DID SO IS UNKNOWN, BUT LACKING ANY EVIDENCE
10 EXCEPT THAT OF THE PRESENT STUDY, WE WOULD GUESS
11 THAT THEY DID NOT. THEREFORE, WE DOUBT THE
12 VOLUME ADJUSTMENTS CAN BE CALLED UPON TO EXPLAIN
13 SMOKER NONSENSITIVITY."
14 "WE ARE LEFT WITH THE CONCLUSION THAT THESE
15 CIGARETTES WERE 'SMOKED ALIKE' BY OUR NINE
16 PANELISTS. YET SMOKING THEM ALIKE AT OBSERVED
17 LEVELS LEADS TO EVEN GREATER DIFFERENCES IN
18 DELIVERY IN THE C.I. OR FTC NUMBERS WOULD

19 SUGGEST, WHICH MAKES THE SMOKER INSENSITIVITY
20 EVEN MORE DIFFICULT TO UNDERSTAND."
21 MS. CHABER: ARE YOU DONE WITH THAT ONE?
22 MS. MASON: YES.
23 MS. CHABER: I HAVE A COUPLE.
24 MS. MASON: OKAY.
25 MS. CHABER: SHORT.
26 MS. MASON: OKAY.
27 MS. CHABER: "USABLE COMPLETE DATA WERE GATHERED
28 ON NINE OF THE 15 SMOKERS. OF THE REMAINING SIX,
5142
1 TWO WERE ELIMINATED FROM THE STUDY BECAUSE OF
2 UNUSUAL PUFFING BEHAVIORS WHICH THE RECORDER
3 COULD NOT HANDLE - ONE FOR QUICK PUFFS
4 INDISTINGUISHABLE FROM RANDOM NOISE AND ONE FOR
5 TAKING TRIPLE AND QUADRUPLE PUFFS AS A REGULAR
6 PRACTICE. THE OTHER SMOKERS GENERATED SOME
7 USABLE AND SOME NONUSABLE DATA, THE LATTER
8 OCCASIONALLY BECAUSE OF RECORDER SYSTEM FLAWS AND
9 OCCASIONALLY BECAUSE OF UNUSUAL PUFFING
10 BEHAVIOR."
11 "THE ABSOLUTE VALUES FOR ANY CIGARETTE FROM ANY
12 PROJECT WILL DEPEND ON THE PARTICULAR PEOPLE WHO
13 ARE DOING THE SMOKING."
14 THAT'S IT.
15 THE COURT: OKAY.
16 MS. MASON: I HAVE ONLY ONE MORE, ONE SENTENCE.
17 IT'S MY LAST ONE. I PROMISE.
18 THE COURT: OKAY. GO AHEAD.
19 MS. MASON: 4858. "WHITTEKER, LESLIE J.
20 NORDHOFF HIGH, OJAI. COURSE NUMBER 0" -- I THINK
21 THAT'S A "Q11095 SCIENCE, FIVE CREDITS, JUNE
22 1974."
23 MS. CHABER: AND WHY DON'T YOU JUST LEAVE IT
24 UP. I WILL READ IT FROM HERE. THERE ARE A COUPLE OF OTHER
25 THINGS. IT WILL BE CLEAR.
26 "JOURNALISM A, FIVE CREDITS, 2-74; ENGLISH 1, B,
27 FIVE CREDITS, 2-74; ENGLISH 1, C, FIVE CREDITS,
28 6-74, DRAMA, B" -- AND I CAN'T TELL IF THAT'S
5143
1 ZEROS, HOW MANY CREDITS -- "6-74; JOURNAL NEWS,
2 C, FIVE CREDITS."
3 I WILL SKIP THIS. LET'S SEE.
4 "PREALGEBRA B, FIVE CREDITS, 2-74; SCIENCE, C,
5 FIVE CREDITS, 6-74; AMERICAN CITIZENSHIP, C,
6 2-74; AMERICAN CITIZENSHIP, B, FIVE CREDITS,
7 6-74; INTRODUCTION TO WOOD, A, FIVE CREDITS,
8 6-74; GRAPHIC ARTS, A, FIVE CREDITS, 6-74;
9 PHYSICAL EDUCATION, FIVE CREDITS, 2-74; PHYSICAL
10 EDUCATION, A, FIVE CREDITS, 6-74; AND CRAFTS, B,
11 FIVE CREDITS, 2-74."
12 THE COURT: IS THAT IT?
13 MS. CHABER: THAT'S IT.
14 MS. MASON: YES.
15 THE COURT: TURN ON THE LIGHTS, PLEASE.
16 OKAY. FIRST I'M GOING TO GIVE THE JURY THE
17 ADMONITION. DON'T DISCUSS THIS CASE WITH ANYONE TONIGHT,
18 DON'T FORM OR EXPRESS ANY OPINIONS ABOUT IT.
19 LET ME ASK COUNSEL. I WAS GOING TO TELL THE JURY
20 WE'LL START AT 9:00, UNLESS YOU FEEL DIFFERENTLY ABOUT IT.
21 MS. CHABER: ACTUALLY, CAN WE TALK TO YOU FOR
22 ONE SECOND ABOUT THAT REALLY QUICKLY?
23 THE COURT: YES, BUT I'VE GOT TO LET THE JURY GO

24 REALLY QUICKLY.

25 MS. CHABER: OKAY.

26 (COURT AND COUNSEL CONFER OUTSIDE

27 THE PRESENCE OF THE JURY)

28 THE COURT: JURORS, LET ME GIVE YOU A PROGRESS

5144

1 REPORT ON WHERE WE ARE ON THE EVIDENCE AND TRY TO KEEP YOU

2 UP, AS BEST I CAN, FROM WHAT I KNOW.

3 THERE IS A POSSIBILITY, ALTHOUGH I DON'T KNOW

4 THAT IT'S A HIGH PROBABILITY, THAT WE CONCEIVABLY COULD

5 FINISH ALL THE EVIDENCE TOMORROW, IF WE GET IN A GOOD LONG

6 DAY, BUT I'M NOT POSITIVE ABOUT THAT AT ALL.

7 WE MAY HAVE ONE OR TWO WITNESSES ON MONDAY TO

8 COMPLETE THE EVIDENCE. AND IF WE DO, I'M NOT SURE WHETHER

9 THEY WILL BE HERE IN THE MORNING OR IN THE AFTERNOON. BUT

10 IT'S POSSIBLE THAT ON MONDAY, IF WE HAD SOME EVIDENCE, THAT

11 I WOULD HAVE YOU IN ONLY FOR HALF A DAY, EITHER IN THE

12 MORNING OR IN THE AFTERNOON, DEPENDING ON THE SCHEDULING OF

13 THE WITNESSES, IF ANY, WHO ARE GOING TO BE CALLED. I WILL

14 OBVIOUSLY KNOW BY THE END OF TOMORROW WHETHER THERE WILL BE

15 ANY WITNESSES ON MONDAY OR NOT.

16 NOW, HERE IS WHAT I DON'T KNOW. I DON'T KNOW

17 WHAT WILL BE YOUR TIME OFF WHILE I DO THE WORK WITH THE

18 LAWYERS. IF WE FINISH ALL THE EVIDENCE TOMORROW -- AND I AM

19 NOT SUGGESTING TO YOU THAT THAT IS GOING TO HAPPEN.

20 PROBABLY, THE LIKELIHOOD IS IN THE OTHER DIRECTION -- BUT IF

21 WE DO FINISH ALL OF THE EVIDENCE TOMORROW, THEN I WOULD

22 PROBABLY GIVE YOU MONDAY OFF AND WORK WITH THE LAWYERS ON

23 MONDAY. THEN WE COULD HAVE THE INSTRUCTIONS AND THE CLOSING

24 ARGUMENTS ON TUESDAY AND WEDNESDAY, AND THEN YOU WOULD

25 RETIRE TO BEGIN YOUR DELIBERATIONS PROBABLY LATE IN THE DAY

26 ON WEDNESDAY.

27 IF WE DO HAVE ANY WITNESSES ON MONDAY, I DON'T

28 KNOW HOW LONG THEY ARE GOING TO TAKE OR WHETHER THAT'S GOING

5145

1 TO LEAVE ME ENOUGH TIME ON MONDAY TO MEET WITH THE LAWYERS

2 SUCH THAT WE CAN GET STARTED WITH ALL OF THIS ON TUESDAY.

3 IN OTHER WORDS, WHAT I'M SAYING IS IF MONDAY IS LARGELY

4 OCCUPIED WITH EVIDENCE, THEN I MAY GIVE YOU A PART OF MONDAY

5 OFF AND ALL OF TUESDAY, BECAUSE I CAN'T GET MY DUCKS IN A

6 ROW IN TIME TO START ON TUESDAY. SO I JUST DON'T EXACTLY

7 KNOW.

8 IN OTHER WORDS, WHAT I'M SAYING, IN SHORT, IS IF

9 WE FINISH ALL THE EVIDENCE TOMORROW, THEN I WILL SPEND

10 MONDAY WITH THE LAWYERS AND HAVE YOU IN ON TUESDAY AND

11 WEDNESDAY FOR THE INSTRUCTIONS AND THE CLOSING ARGUMENTS.

12 IF WE DON'T FINISH THE EVIDENCE TOMORROW, IT PROBABLY WON'T

13 TAKE ALL DAY ON MONDAY TO FINISH IT. WHETHER WE'LL DO IT IN

14 THE MORNING OR THE AFTERNOON, I DON'T KNOW, BUT I THINK

15 MONDAY IS LIKELY TO BE EITHER A DAY OFF FOR YOU OR A HALF

16 DAY, BUT I CAN'T TELL YOU WHICH HALF OF THE DAY.

17 IF IT IS A HALF DAY ON MONDAY, I JUST DON'T KNOW

18 WHETHER I CAN GET MY DUCKS IN A ROW WITH THE LAWYERS AND GET

19 ALL THE JURY INSTRUCTIONS DONE OR NOT. IF I CAN'T, THEN I

20 WILL HAVE TO GIVE YOU PART OF MONDAY AND TUESDAY OFF AND

21 THEN WE'LL DO ALL OF THIS ON WEDNESDAY AND THURSDAY.

22 ALL I CAN SAY IS I'LL DO MY BEST, IN WORKING WITH

23 THE LAWYERS AND VICE VERSA, TO GET OUR WORK DONE AS BEST WE

24 CAN TO MEET YOUR CONVENIENCE. BUT I DO HAVE TO SPEND SOME

25 TIME WITH THEM NOT ONLY ON THE JURY INSTRUCTIONS BUT ALSO ON

26 THE QUESTIONS THAT WE ARE GOING TO PUT TO YOU, AND ALL OF

27 THAT IS GOING TO TAKE SOME TIME. WE ARE STARTING TO WORK ON

28 THAT PROCESS NOW. WE HAVE SPENT SOME TIME ON IT ALREADY.

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1 SO WE ARE NOT BEING INSENSITIVE TO YOUR SCHEDULE, BUT THINGS
2 TAKE TIME.

3 AND SO THAT'S THE BEST ESTIMATE I CAN GIVE YOU.
4 CERTAINLY BY THE END OF THE DAY TOMORROW, I'LL BE ABLE TO
5 GIVE YOU A VERY GOOD PREDICTION ABOUT HOW MUCH EVIDENCE, IF
6 ANY, WE'LL HAVE ON MONDAY, AND HOPEFULLY BE ABLE TO BE MORE
7 SPECIFIC WITH YOU ABOUT WHEN WE ARE GOING TO HAVE THE
8 REMAINDER, THAT IS THE INSTRUCTIONS AND THEN THE ARGUMENT.

9 SO HAVE A GOOD EVENING. I WOULD LIKE TO GET
10 STARTED TOMORROW -- IT IS IMPORTANT -- AND I'M GOING TO MAKE
11 EVERY EFFORT WITH THE LAWYERS ALSO TO START AT 9:00 O'CLOCK,
12 BECAUSE I THINK THE ONLY CHANCE THAT WE HAVE OF FINISHING
13 ALL THE EVIDENCE TOMORROW -- AND I DON'T KNOW IF THAT WILL
14 HAPPEN -- IS IF WE START AT 9:00.

15 SO I WANT TO START AT 9:00, TO BE SURE THAT WE
16 GET EVERYTHING DONE TOMORROW THAT AT LEAST WE CAN GET DONE
17 TOMORROW. SO WE'LL SEE YOU AT 9:00 O'CLOCK.

18 (THE PROCEEDINGS ADJOURNED AT 5:08 P.M.)
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